

THE INDO-US NUCLEAR DEAL: AN OVERVIEW OF IAEA SAFEGUARDS AND NUCLEAR TRADE WITH NSG

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Introduction

The Indo-US civilian nuclear cooperation agreement which aims to create a “strategic partnership” between two “engaged democracies,”¹ was in principle agreed upon on July 18, 2005. The deal was finally approved on October 10, 2008 when India’s External Affairs Minister, Parnab Mukherjee, and the US Secretary of State, Condoleezza Rice, put the final seal on the Agreement.² At the signing ceremony, Mr. Mukherjee welcomed the deal as a first step towards civilian nuclear cooperation and nuclear trade between India and the US and with the rest of the world. He said, “We now look forward to work with US companies on the commercial steps that will follow to implement this landmark agreement.”³ In response, Rice also stated that it was “One more visible sign of the transformed relationship and partnership that our two countries are building together.” She further added, “What is most valuable about this agreement is how it unlocks a new and far broader world of potential for our strategic partnership in the 21st century, not just on nuclear cooperation, but on every area of national endeavour.”⁴

Earlier, the International Atomic Energy Agency (IAEA) and the Nuclear Suppliers Group (NSG), respectively on August 1, and September 6, 2008, formally approved the Indo-US nuclear deal. The approval of India-specific IAEA Safeguards Agreements and relaxations in the NSG rules for “legal” nuclear trade between India and NSG member states was considered a “momentous decision” by the Indian leadership, its friends and allies. The Indian Prime Minister, Manmohan Singh, welcomed the NSG decision and said, “It marks the end of India’s decade long isolation from the nuclear mainstream and the technology denial regime.”⁵ He further added, “It is recognition of India’s impeccable non

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proliferation credentials and its status as a state with advanced nuclear technology.”⁶ Similarly, the Acting US Undersecretary of State for Arms Control Issues, Johan Rood, said, “This is a historic moment for the NSG, for India, and India’s relations

with the rest of the world.”⁷

At this point, one thing is clear that the US President, George W. Bush, has so far fulfilled all his promises; first, by amending the US non-proliferation laws (Atomic Energy Act of 1954 and Nuclear Non-proliferation Act of 1978) and nonproliferation policies in the shape of “Agreement for Cooperation between the Government of the United States of America and the Government of India Concerning Peaceful Use of Nuclear Energy,” also known as “123 Agreement”⁸. Second major step under this agreement was to get a waiver for India from the full scope IAEA safeguards. This resulted in India-IAEA safeguards Agreements. The third most important step was to make India an “exception” by relaxing NSG rules for legal nuclear trade with NSG member states. The US, with the help of its friends and allies, also succeeded in removing this hurdle. So, it is likely that the 123 Agreement for civil nuclear energy cooperation and the full development of India’s three-staged nuclear programme will materialize, as agreed on October 10, 2008.

In this regard, an overview of these two major developments i.e. India-IAEA Safeguards Agreements, and the ‘exception’ provided to India by a NSG member state to acquire full access to nuclear technology, would be presented in the following sections. The main purpose of this overview is to highlight the true nature, scope and significance of these two agreements which are a prerequisite for the full implementation of the Indo-US nuclear deal. It is important to note that these two agreements cannot be studied without keeping in mind the actual provisions stipulated in the 123 Agreement.

Overview of IAEA Safeguards

Since 1957, the international community entrusted the IAEA with the mandate to promote peaceful use of nuclear energy among its member states. Similarly, the Indo-US nuclear deal has also attached a leading role to the IAEA safeguards system, for its full implementation. The mandate of the IAEA safeguards under this deal is to ensure full international cooperation for “peaceful purposes,”¹⁰ and to ensure that such cooperation will not contribute to the “proliferation of nuclear weapons or other nuclear explosive devices,” and “to guard against withdrawal of safeguarded nuclear material from civilian use at any time.”¹¹ Yet various aspects of the agreement are contrary to this assurance because the 123 Agreement in its article 2.4 has accepted and respected the Indian nuclear weapons programme by stating its intention not to affect its “un-safeguarded nuclear activities.” It also does so by not allowing any other interpretation of India’s right to an independent nuclear weapons programme, and by assuring that this Agreement will not “hinder or otherwise interfere” in India’s independent nuclear activities.¹² It remains quiet clear that any diversion of peaceful

nuclear activity for weapons development by India would erode this IAEA mandate.

Furthermore, in order to fulfil its commitments under the 123 agreement, the US demands that “India will place its civilian nuclear facilities under India-specific safeguards in perpetuity and negotiate an appropriate safeguards agreement to this end with the IAEA.”¹³ In this regard, the 123 Agreement established following terms and conditions for India under its Articles, 6 (III), 7, 8, 10, and in Agreed Minutes, with reference to the IAEA safeguards;

Safeguards will be maintained with respect to all nuclear materials and equipment transferred pursuant to this agreement, and with respect to all special fissionable material used in or produced through the use of such nuclear materials and equipment, so long as the material or the equipment remains under the jurisdiction or control of the cooperating Party.

Safeguards in perpetuity in accordance with the India-specific IAEA safeguards Agreement, and an Additional Protocol, when in force.

If IAEA determines that safeguards are no longer possible, concerned parties should consult and agree on appropriate verification measures.

Facilitation and maintenance of the IAEA safeguards in respective territories.

Place nuclear fuel cycle activities under the IAEA safeguards.

Maintenance of a system of accounting for and control on relevant nuclear material transferred, used or produced pursuant to this agreement.

Application of storage, retransfer and physical protection measures, set out in IAEA INFCIRC 225/Rev.4

By-product materials would be subject to the IAEA document GOV/1999/19/Rev.2.

As far as termination and cessation of cooperation is concerned, serious concerns about a changed security environment or other actions that could impact national security were given prime importance in the 123 Agreement. However, the IAEA role in this regard was limited to the citation of a violation of the IAEA safeguards agreement, and the IAEA Board of Governors was mandated to make a finding of non-compliance. With this exception, all the rights of termination and cessation of cooperation were left for either party, prior to the expiration of 123 Agreement on one year’s written notice.¹⁴ However, it is clear that on the termination or expiration of the agreement or withdrawal of a party from this agreement all the nuclear material, items, by-products and equipment would remain under the IAEA safeguards until the parties agree that they are returned or no longer usable for a nuclear activity or no longer relevant from the point of view of safeguards.¹⁵

On Indian request, in order to meet the requirements set by the 123 Agreement for India-specific IAEA safeguards, the IAEA concluded an INFCIRC/66-type agreement on August 1, 2008, which is titled, “Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities.”¹⁶ The year 2009 is considered as the first year for the implementation of the India-IAEA safeguards agreement.

This agreement by nature is an “umbrella agreement,” which means that at some later stage India can also include more facilities for safeguards application under this agreement.¹⁷ In case India in the future decides to offer an enrichment plant for safeguards, it can also be included in this agreement. It also includes a provision that if other parties agree to include items which were previously concluded by India under other safeguards agreements.¹⁸

These terms will put India on an advantageous position, because India wants to separate its civilian and military nuclear facilities in a phased manner. The time factor involved in this phased separation will allow India to place such facilities under safeguards which are no longer required or have become obsolete. Such a voluntary placement of facilities under safeguards will not hurt India’s nuclear weapons programme. Even the offer to place an enrichment plant, referred in paragraph 86 of this safeguards agreement, solely rests on India. This agreement implies that India would place its civilian nuclear facilities “voluntarily” for safeguards rather than “safeguards in perpetuity”. This provides no serious nonproliferation benefits given the fact that India maintains a nuclear weapons programme out side of safeguards.¹⁹

Moving further, the preamble of the safeguards agreement clearly shows that India’s acceptance of the IAEA safeguards and its “assurance against withdrawal of safeguarded nuclear material from civilian use at any time,” is conditioned with;

“The conclusion of international cooperation arrangements creating the necessary conditions for India to obtain access to the international fuel market, including reliable, uninterrupted, and continuous access to fuel supplies from companies in several nations, as well as support for an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India’s reactors.”²⁰

India made it clear, once again, that any failure on the fulfillment of these commitments on the part of cooperating parties, India can take more drastic and undefined measures. Under the India-IAEA Safeguards Agreement India can invoke another condition, which is ambiguous, undefined and can even go beyond the development of strategic reserve. The condition, as noted in the preamble, states, “India may take ‘corrective measures’ to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies.”²¹

Furthermore, Paragraph 4 of the Agreement also notes that, “The application of safeguards under this agreement is intended to facilitate implementation of relevant bilateral or multilateral arrangement to which India is a party, which are essential to the accomplishment of the objectives of this agreement.”²² This again gives a right to India to take “corrective measures” if the relevant bilateral or multilateral arrangements are not fulfilled or facilitated. In this regard, international

non-proliferation experts have argued that “The Board of Governors should obtain an official clarification from the Government of India, whether it takes the view that, if the relevant bilateral or multilateral arrangements have not been implemented fully, it could terminate the safeguards agreement, or selectively withdraw from safeguards....?”²³

It is important to note here that the safeguards agreement has not highlighted any reason for such disruption. If India is clear in its intent to develop a three-staged peaceful national nuclear programme for its national development, then India should not be afraid of any un-natural disruption of fuel supplies. India’s growing economy is well integrated in the international market and no advanced nuclear state, including China, would like to disturb its economic relations with India.

Since it is an item/facility specific safeguards agreement, Paragraph 11, 12, 13 and 14 (a) of this agreement defines those items which are subject to safeguards under this agreement. A brief overview these items are listed below;²⁴

Any facility listed in the Annex based on Indian declaration at the time of entry into force of this agreement, or any other facility to be determined by India.

Any nuclear material, non-nuclear material, equipment and components supplied to India which are required to be safeguarded pursuant to a bilateral or multilateral arrangement which India is a party.

Any nuclear material, including subsequent generations of special fissionable material, produced, processed or used in or by the use of a facility listed in the annex or by the use of above mentioned items.

Any nuclear material substituted for items under other relevant provisions of this agreement.

Any heavy water substituted in accordance with other relevant provision of this agreement.

Any facility other than a facility identified above or any other location in India where items under this agreement are used shall be subject to this agreement when India notifies about them according to other relevant provisions of this agreement.

However, the scope of this agreement is limited to the items subject to this agreement.

Keeping in mind these items, in Paragraph 1, India undertakes that; “None of the items subject to this Agreement shall be used for the manufacture of any nuclear weapon or to further any other military purpose and that such items shall be used exclusively for peaceful purposes and shall not be used for the manufacture of any nuclear explosive device.” Similarly, the IAEA undertakes its responsibility to guard against any withdrawal for military purposes. However, in Paragraph 5, of this agreement the IAEA, following the commitment set out in Article 2.4 of the 123 Agreement, made it clear that this safeguards agreement will not “hinder or otherwise interfere”²⁵ with India’s independent nuclear activities for its own purposes. This raises a very important point that the Indo-US nuclear deal would in no way benefit

the international nuclear non-proliferation regime, because Indian nuclear weapons programme will continue uninterrupted.

It is important to note here that all the facilities offered for the safeguards would be determined by India. The four weeks time to report receipt of any nuclear material, non-nuclear material, equipment and components, pursuant to this agreement will provide ample time to Indian nuclear weapons establishment to have a close look at what is coming in. This provides an opportunity to Indian nuclear scientist to copy designs of imported nuclear items. Similarly, Paragraph 11 (f) and 14 (b) also notes that any facility or location, other than the listed one, where India can produce, process, use, fabricate, any nuclear or non-nuclear material, equipment or components pursuant to this agreement, will become subject to safeguards only when the IAEA receives written notification from India. So the time in between receipt of items and written notification will also play out in India's favour.

For the purpose of physical protection and system of accounting for and control of all items, Paragraph 99, and 100 of the India-IAEA safeguards agreement mainly relies on measures taken by India itself respectively by taking into account the recommendations set out in INFCIRC/225/Rev.4, and provisions which would be set out in subsidiary arrangements.²⁶ This can be a possible loophole for nuclear theft and smuggling and diversion of peaceful nuclear technology for military purpose.

As far as provision of information to the IAEA is concerned, India will provide all the relevant notifications and information related to facilities, items, and bilateral and multilateral arrangements, pursuant to this agreement, by means of reports. However, the IAEA will verify all the relevant information and will maintain an inventory of items subject to this Agreement.²⁷ Furthermore, the IAEA will not provide or publish any communication or information to any state, organisation or person except for what is required for the fulfilment of Agency responsibilities.²⁸ However, a summarised list of items or any additional information may be published upon a decision of the Board.

As far as termination of safeguards and final clauses of this agreement are concerned;²⁹

Termination shall be implemented taking into account provisions of GOV/1621 (August 20, 1973), which state "That the Duration of the agreement should be related to the period of actual use of the item in the recipient state."

Para 30 lists a number of instances for termination of safeguard on items, when; -It has been returned to supplier, -Not improved, -It has been consumed or diluted in such a way that it is no longer

usable for any nuclear activity subject to safeguards,
-Or the Agreement expires.

According to Para 32, Termination of safeguards on a facility is only possible when India and the Agency have “Jointly Determined” that the facility is no longer useable, items are returned to suppliers, consumed, no longer useable for any nuclear activity, or practically irrevocable. Paragraph 109 also states that “This agreement shall remain in force until, in accordance with its provisions, safeguards have been terminated on all items subject to this Agreement, or until terminated by “mutual agreement” of the parties to this Agreement.” It is believed that this assures that there is no unilateral withdrawal for India from the IAEA safeguards.

Remaining clauses of India-IAEA safeguards agreement deals with “exemption and suspension,” “Transfers”, and “Safeguards and Inspection Procedures,” which are more technical in nature. However, their careful analysis could prove beneficial for a deeper understanding of this agreement.

The overall review of India-IAEA Safeguards Agreement clearly reflects that it will not contribute to fulfilling the aims of the international nuclear nonproliferation regime. This agreement does not supplement in any way the objectives of NPT, because India is a non-signatory to it, and its nuclear weapons programme will continue to work uninterrupted.

Overview of Nuclear Trade with NSG

As far as nuclear trade with the NSG is concerned, the 123 Agreement does not allow the restriction of nuclear trade with a third party. Throughout the 123 Agreement, following terms such as “stable,” “reliability of supplies,” “smooth and uninterrupted operation,” “predictable,” “continuing assurance,” and “Indian full access to international fuel market” were meant to assure India of the possibility of nuclear trade with other advanced nuclear states.³⁰ The US, keeping in mind its commitment to a smooth operation of India’s peaceful nuclear programme, assured³¹ the creation of necessary conditions for India’s access to international fuel market. According to the Article 5 (6) of the 123 Agreement, these necessary conditions³² include following commitments;

US will incorporate assurances regarding fuel supplies in the present agreement, which would be submitted to the US Congress.

Adjustment of the practices of NSG.

India and the US will negotiate with the IAEA for an India-specific fuel supply agreement.

US will support Indian effort for the development of a strategic reserve of nuclear fuel.

Request friendly countries; Russia, France and UK, to restore fuel supplies to India.

Provision of “corrective measures” that India may take in the event of disruption of foreign fuel supplies.

For that purpose, the US with the help of its friends and allies, brought in the NSG and requested to relax its rules of nuclear trade in Indian favour. On September 6, 2008, after discussions on a US draft proposal, the NSG participating governments adopted a “Statement on Civilian Nuclear Cooperation with India.”³³ According to the statement, issued by the NSG, the participating governments have taken the note of following voluntarily measures taken by India;³⁴

Separation of civilian nuclear facilities in a phased manner and to file a declaration with the IAEA, in accordance with its separation plan, INFCIRC/731.

Conclusion of India-IAEA safeguards agreement for civilian nuclear facilities, including IAEA document Gov/1621.

Committing to sign and adhere to an Additional Protocol with respect to India’s civil nuclear facilities.

Refraining from transfer of enrichment and reprocessing technologies to states that do not have them and supporting international efforts to limit their spread.

Instituting a national export control system, harmonising its export control list with those of NSG, and commitment to adhere to the NSG guidelines.

Continuing its unilateral moratorium on nuclear testing, and its readiness to work with others towards the conclusion of a multilateral Fissile Material Cut-off Treaty.

Based on these commitments and actions taken by India, the NSG adopted for implementation the following policy on civil nuclear cooperation by the NSG with the IAEA-safeguarded Indian civil nuclear programme;³⁵

Notwithstanding paragraphs 4 (a), 4 (b), and 4 (c) of INFCIRC/254/Rev.9/Part 1, participating governments may transfer trigger list items and/or related technology to India for peaceful purposes and for use in IAEA safeguarded nuclear facilities, provided that the transfer satisfies all other provisions of INFCIRC/254/Part 1, as revised, and provided that transfers of sensitive exports remain subject to paragraphs 6 and 7 of the guidelines.

Notwithstanding paragraphs 4 (a) and 4 (b) of INFCIRC/254/Rev.7/ Part 2, participating governments may transfer nuclear-related dual-use equipment, materials, software and related technology to India for peaceful purposes and for use in IAEA safeguarded nuclear facilities, provided that the transfer satisfies all other provisions of INFCIRC/254/part 2.

Participating governments should notify each other of approved transfer to India, and exchange of information, including their own bilateral agreements with India.

Chairman is requested to confer and consult with India and keep the plenary informed.

Participating governments would maintain contact and consultations. However, in the event that one or more participating governments consider that circumstances have arisen which require consultations; participating governments will meet, and then act in accordance with paragraph 16 of the guidelines.

This implies that the US will provide a “reliable,” but limited access to nuclear fuel and full access to India would only be possible through firms from several nations

under the NSG and the IAEA. However, among other things, this waiver has established that according to the non-proliferation principle of the NSG guidelines, “suppliers should authorise transfer of items or related technology identified in the trigger list only when they are satisfied that the transfers would not contribute to the proliferation of nuclear weapons or other nuclear explosive devices or to be diverted to acts of nuclear terrorism.”³⁶

As far as nuclear trade with advanced nuclear states is concerned, India plans to build 18-20 nuclear reactors at an estimated cost of \$30 billion. India’s External Affairs Minister, Parnab Mukherjee, has considered the NSG waiver as a “Passport”³⁷ for nuclear trade with the international community. With India gearing up to a new era of nuclear commerce, scientists at the Defence Research and Development Organisation and Indian Space Research Organisation believe that the NSG waiver will not only address the country’s energy needs, but also help in getting critical technologies in diverse areas which have been denied for decades. They believe, apart from the nuclear energy, the waiver will result in flow of advanced technologies and a range of dual use items to India, which would help various strategic programmes in many sectors including aerospace and defence.³⁸

Soon after the NSG waiver to India for nuclear trade with its members, majority of them expressed their willingness to cooperate with India in the field of nuclear energy. Let us have a look at the international response of leading nuclear states on the subject of nuclear trade with India:

- US: the US aims to make New Delhi a “full partner” and to ensure a \$100 billion market for American companies. In this regard, the Marxists (Communist Party of India) recently claimed that the Indian Government was striking underhand nuclear deal for about 10000 MW worth of reactors from the US based firms. It was estimated that India will spend about Rs. 280,000 crore to bail out the U.S. nuclear industry that has failed to secure any domestic order for the last 30

years.

- Russia: both Russian and India have a long lasting partnership in defence and the nuclear field. Earlier, in January 2007, in a joint statement issued after a meeting between Russian President, Vladimir Putin, and Prime Minister, Manmohan Singh, Russia offered to build four new nuclear power plants in India, in addition to the two reactors that are already under construction.⁴⁰ So it is likely that Russia will provide an uninterrupted nuclear fuel and material to India, under this deal.

China: China has insisted that it has done nothing to sabotage NSG waiver for India. Chinese Foreign Minister, Yang Jiechi, said that China fully understands India’s “urgency” to make “full use” of peaceful nuclear power, because of its growing needs,⁴¹ and two countries should “move beyond doubts” to build a stronger relationship. India believes that China is unpredictable neighbour however, after the NSG approval

Foreign Secretary Shivshankar Menon, stated, “I think it is behind us now.”⁴²

France: France is willing to become an important partner. On September 16, France described the NSG waiver to India as a “Historic Achievement” and showed its willingness to become an important partner of India in all aspects of nuclear trade. In this regard, the French Minister of State for External Trade, Anne Marie Idrac, clearly stated that “it opens the way for signing of the bilateral agreement, which was concluded during the visit of President Sarkozy in January [2008].”⁴³ It is important to note that French exports to India have gone up from \$837 million in 1996 to \$2.5 billion in 2006 and \$3.4 billion in 2007.⁴⁴ A top Indian nuclear scientist and former chairman of the Atomic Energy Commission, M. R. Srinivasan, believes that France and Russia will ensure uninterrupted fuel supply to Indian reactors in the event of America snapping nuclear cooperation.⁴⁵

Australia: Prime Minister Kevin Rudd maintained his stance against allowing uranium sales to India. Currently, it seems that Australia is committed to supplying uranium to only those countries who are parties to the Nuclear Non-Proliferation Treaty.⁴⁶ Rudd is likely to face a tough time in maintaining his stand of not allowing uranium sales to India especially after his government favoured India’s waiver at the Nuclear Supplier Group meeting in Vienna. This ambivalent stance exposes a contradiction within the official Australian position.⁴⁷

Japan: Japan backed the deal to join an international consensus taking a “comprehensive perspective”. However, Tokyo still has concerns as Japan’s Chief Cabinet Secretary, Nobutaka Machimura, said that “We would continue to assert that India should join the comprehensive test ban treaty.”⁴⁸

New Zealand: New Zealand was one of the four sceptics in the 45member NSG along with Ireland, Switzerland and Austria who sought to block, till the last moment, a waiver to India for resuming nuclear commerce with the international community. In this regard, New Zealand Prime Minister, Helen Clark, has stated that it was India’s commitment to the unilateral moratorium of nuclear testing that convinced New Zealand to back the Nuclear Suppliers Group waiver to New Delhi to trade in peaceful nuclear technology. He also said, “Any resumption of testing could trigger a meeting and cause a decision to review.”⁴⁹

The Netherlands: Netherlands was one of the Nuclear Suppliers Group countries who had reservations on the issue of granting a waiver to India. Netherland’s Ambassador, Bob Hiensch, said that their fears had been addressed by the statement of External Affairs Minister Pranab Mukherjee on New Delhi’s commitments to nonproliferation goals.⁵⁰

In short, it is quiet clear that whenever the 123 Agreement is signed, India would definitely get an access to international fuel markets. India’s Minister of Power, Sushilkumar Shinde said in an official statement, “We hope that this cooperation with the US will help us add 40,000 MW of nuclear power by the year 2020.”⁵¹ According to industries body-Assocham, about 40 companies, including Videocon, have already started talks with foreign firms to set up nuclear power plants envisaging a total investment of about Rs. 2,00,000 crore.⁵² From the commercial point of view, the Indo-US nuclear deal is also beneficial for NSG members. However, this deal would lift uranium spot prices. The price of uranium had already hit a record of \$136 per

pound in June 2007, skyrocketing from just \$7 in 2000, due to the revival of interest in nuclear energy.⁵³ Most likely, it is the US and the European countries who would be the main beneficiaries of this deal.

Conclusion

Creating such “strategic partnerships” by granting exceptions and waivers would have wide-ranging implications for the international nuclear nonproliferation regime. The manner in which the 123 Agreement has given respect to India’s nuclear weapons programme and recognised India as a “responsible” nuclear state with “advanced nuclear technology” will encourage other countries to opt for similar nuclear arrangements.⁵⁴ This may have both positive and negative implications; although nuclear energy can help states meet their energy demands in a clean and efficient manner, there is always the danger that it can be diverted to nuclear weapons development. This inherent danger can be a potential threat to regional as well as international peace and security.

These developments have made it clear that a state should not compromise its national security for the sake of its national development. Similarly, energy deficit countries like Pakistan should go for similar arrangements, by not compromising their national security. However, currently, Pakistan is suffering from turmoil caused by extremism and terrorism. First, Pakistan should tackle these threats to its internal as well as external security by re-visiting its policies. Achieving stability would lead us towards national development and national development will compliment national security.

Notes & References

1

In 2008, five former US secretaries of state, Henry Kissinger, James Baker, Warren Christopher, Madeleine Albright, and Collin Powell, in a round table discussion gave their advised to the next US administration in terms of dealing with India. During the discussion Henry Kissinger said, “The relationship with India is one of the very positive thing that is happening,” the US and India have entered a new era that can be best described as “engaged democracies.” Cited in, Karl F. Inderfurth, “The US and India Expanding Engagement Agenda,” Foreign Views, *Daily Times*, September 11, 2008, www.dailytimes.com.pk

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“It’s Done: India Signs Nuclear Deal with the US,” *Rediff News*, October 11, 2008, <http://www.rediff.com/news/2008/oct/11ndeal.htm>

3

Ibid.

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“Nuclear Deal is Signed, Sealed, and Delivered,” *The Times of India*, October 11, 2008.

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Statement by the Indian Prime Minister, Dr. Manmohan Singh, on the final outcome of the meeting of the Nuclear Suppliers Group, *Ministry of External Affairs*, New Delhi, September 6, 2008, <http://meaindia.nic.in/>

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Ibid.

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“Nuclear Group Lifts India Ban,” *Gulf News*, September 7, 2008.

8

The text of the 123 Agreement was released by the US Department of State and Indian Government on August 3, 2007. For Complete text see, “Agreement for Cooperation between the Government of the United States of America and the Government of India Concerning Peaceful Use of Nuclear Energy,” *US Department of State*, August 3, 2008, <http://www.state.gov/r/pa/prs/ps/2007/aug/90050.htm>

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It is manifested in the US Nuclear Non-proliferation Act of 1978 that the US can only engage in civil nuclear cooperation with a state which accepts full scope IAEA safeguards. The only exceptions to this policy are the recognised Nuclear Weapons State (NWS) under the NPT.

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The term “peaceful purpose” is defined in Article 1 (M) of the 123 Agreement in following terms; “Peaceful purposes include the use of information, nuclear material, equipment or 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 other military purpose. Provision of power for a military base drawn from any power network, production of radioisotopes to be used for medical purposes in military environment for diagnostic, therapy, and sterility assurance, and other similar purposes as may be mutually agreed by the parties shall not be regarded as military purpose.”

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“Preamble,” “Transfer of Nuclear Material, Non-nuclear Material, Equipment, Components, and Related Technology,” Article 5.6 (c), “Agreement for Cooperation between the Government of the United States of America and the Government of India Concerning Peaceful Use of Nuclear Energy,” *op. cit.*

12

“Scope of Cooperation”, Article 2.4, *ibid.*

13

“Transfer of Nuclear Material, Non-nuclear Material, Equipment, Components, and Related Technology,” Article 5.6 (c), *ibid.*

14

For complete details of termination and cessation options for either party see, “Termination and Cessation of Cooperation,” Article 14, *ibid.*

15

“Entry into Force and Duration” Article 16,i *Ibid.*

16

Draft “Agreement between the Government of Indian and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities,” attached in, Nuclear Verification, “The Conclusion of Safeguards Agreements and Additional Protocols: An Agreement with the Government of India for the Application of Safeguards to Civilian Nuclear Facilities,” GOV/2008/30, July 9, 2008.

17

Ibid.

18

19 “Safeguards Under other Agreements,” Para 22, India-IAEA safeguards Agreement.

Daryl Kimball, Fred McGoldrick, and Lawrence Scheinman, “IAEA-India Nuclear Safeguards Agreement: A Critical Analysis,” *Arms Control Association*, July 30, 2008, <http://armscontrol.org/node/3205>

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These terms were noted for the purpose of IAEA safeguards agreement in the preamble of the India-IAEA Safeguards Agreement.

21

See preamble of the India-IAEA Safeguards Agreement.

22

“General Principles,” Paragraph 4, *ibid.*

23

Daryl Kimball, Fred McGoldrick, and Lawrence Scheinman, “IAEA-India Nuclear Safeguards Agreement: A Critical Analysis,” *op. cit.*

24

Mainly paragraphs, 11, 12, 13, and 14 identifies the nature of those items which are subject to the India-IAEA safeguards agreement, however, for the interpretation of these facilities relevant provisions should be taken into account. For full details see, Draft “Agreement between the Government of Indian and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities,” *op. cit.*

25

“General Principles,” Paragraph 5, *ibid.*

26

“Physical Protection,” and “System of Accounting and Control,” Paragraph 99, and 100, *ibid.*

27

“Provision of Information to the Agency,” Paragraphs 16 to 21, *ibid.*

28

“General Principles,” Paragraph 8, *ibid.*

29

For complete details see, “Termination of Safeguards,” Article 29-32, and “Final Clauses, Article 109, *Ibid.*

30

All these terms were used in preamble and various articles such as Article 2, and 4, of “Agreement for Cooperation between the Government of the United States of America and the Government of India Concerning Peaceful Use of Nuclear Energy,” *op. cit.*

31

“Transfer of Nuclear Material, Non-nuclear Material, Equipment, Components, and Related Technology,” Article 5.6 (A), *ibid.*

32

Ibid.

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“NSG Public Statement” on Extraordinary Plenary Meeting, Vienna, September 6, 2008.

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“Statement of Civil Nuclear Cooperation with India,” *Adopted by the NSG on its Extraordinary Plenary Meeting* on September 6, 2008.

35

Ibid.

36

“Communications Received from Certain Member States Regarding Guidelines for the Export of Nuclear Material, Equipment and Technology,” INFCIRC/254/Rev.7/ Part 1,

February 23, 2005.

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“NSG waiver Passport for India’s N-trade: Pranab” *Rediff News*, September 8, 2008, <http://www.rediff.com/news/2008/sep/08ndeal6.htm>

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“Nuclear Deal will Bring in Restricted Technology, Says top Scientists,” *Rediff News*, September 10, 2008, <http://www.rediff.com/news/2008/sep/10ndeal3.htm>

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In the Indo-US civilian nuclear cooperation agreement and other relevant official documents e.g., the India-IAEA Safeguards Agreements, the US including India were referred as "States with Advanced Nuclear Capabilities." Although the US legal status as advanced nuclear weapons state is clear, however, through this deal the US has also established that India nuclear status is similar to its own and other advanced nuclear states, which are legally recognised by the international community. The US has recognised India as a responsible nuclear state, ignoring the fact that India is a non-signatory to the Nuclear Non-proliferation Treaty (NPT), which would brought wide-ranging implications for the international nuclear non-proliferation regime.