

The Politics of US-India Nuclear Deal

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Abstract

The US-India nuclear deal has been justified as an economic and commercial imperative that would also help strengthen the non-proliferation cause. The deal, however, has huge strategic significance and should be situated within the broader parameters of the evolving convergence between Washington and New Delhi in the post-Cold War era. Apart from being discriminatory and contrary to the global non-proliferation norms, it has grave consequences for the regional stability as well.

Keywords: The United States, China, India, Pakistan, Non-proliferation, Deterrence.

Introduction

The 2008 US-India nuclear deal presents an important transformation in the US policy towards South Asia, whereby Washington has modified its even-handed post-1998 non-proliferation agenda towards India and Pakistan that aimed at freezing and rolling back the nuclear programmes of the two South Asian states. In its new formulation, the United States has adopted an asymmetrical approach towards the region that immunises Indian nuclear programme in its global non-proliferation agenda and takes up a discriminatory posture towards Pakistan. In this regard, it has entered into civilian nuclear cooperation with New Delhi, providing a de facto legitimacy to India's nuclear programme and has refused to offer similar arrangements to Pakistan.

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The deal has enabled India to “acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the US” in return for “the same responsibilities and practices” undertaken by such countries.¹ Consequently, India has been entitled to gain access to advanced nuclear technology and to import natural Uranium as well as Low-enriched Uranium (LeU). Similarly, the deal has paved the way for installation of commercial nuclear power reactors in India by the technologically advanced countries who have also ensured unhindered nuclear fuel supply for these reactors. Furthermore, the deal has also made it possible for India to receive indirect cooperation in its ambitious Fast Breeder Reactor programme because of its ability to acquire dual-use technology from technologically advanced countries.

Negotiating the Deal

The deal has been concluded through a long process of negotiations between India and the United States spanning a period of about three years. The first step in this regard was taken when Indian Prime Minister Manmohan Singh and the US President George W. Bush reached an agreement in principle to conclude a bilateral accord on civilian nuclear cooperation on July 18, 2005, for “promoting nuclear power and achieving energy security.” The two leaders then formally signed a preliminary nuclear pact on March 2, 2006, in New Delhi during the visit of the US President.

In pursuit of these agreements, the US Congress passed the Hyde Act in December 2006 that removed the important non-proliferation-related legal hurdles and allowed the United States to share nuclear technology with India. Based on the Hyde Act, the two countries then finalised the terms of their agreement on July 27, 2007. This is commonly known as the 123 Agreement as it dealt with the changes in the Section 123 of the US Atomic Energy Act of 1954 which specifies a number of conditions for any civilian nuclear cooperation with other countries.

¹ “Joint Statement by President George W. Bush and Prime Minister Manmohan Singh,” July 18, 2005, <http://2001-2009.state.gov/p/sca/rls/pr/2005/49763.htm>

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Subsequently, the deal was approved by both the US Congress and the Senate on September 28, 2008, and October 1, 2008, respectively, allowing India to purchase nuclear fuel and technology from the United States. President Bush then signed the legislation on October 8, 2008, that was called the United States-India Nuclear Cooperation Approval and Non-proliferation Enhancement Act. The agreement was then formally signed between the United States and India on October 10, 2008.

As required by the deal, India undertook the separation of its nuclear facilities into two streams i.e. those meant for the military and strategic purposes and those concerned with the civilian nuclear activities. The deal required India to put only the civilian nuclear installations under the safeguards of the International Atomic Energy Agency (IAEA) while exempting its military programme from such an arrangement. Meanwhile, IAEA also agreed to put India's civilian nuclear facilities under its system of safeguards on August 1, 2008.

As part of the deal, the United States also secured India-specific exemptions in the Nuclear Suppliers Group (NSG) guidelines on September 6, 2008. Washington convinced the members of NSG to ease the long-standing restrictions on nuclear trade with India² and made it possible for New Delhi to seek similar arrangements with all the NSG member states. The implications of the nuclear deal thus went much beyond the dynamics of bilateral relations between the United States and India. As a result, just two days after the US Congress approved the nuclear deal, India concluded a similar nuclear pact with France, the first country to have such an agreement with India. Subsequently, India has been able to secure nuclear deals with many other members of NSG, including the UK, Canada, South Korea, Kazakhstan, Germany, etc.

The nuclear deal has been justified as an economic imperative in the bilateral relationship between India and the United States. The preliminary nuclear pact of March 2, 2006, stated that the arrangement is aimed at helping India satisfy its "surging energy needs for its growing

² Daniel Horner, "NSG Revises List, Continues India Debate," *Arms Control Today*, July 2, 2013, <http://www.armscontrol.org/print/5840>

economy.”³ It has been argued that the arrangement is a prerequisite for achieving 8-9 per cent growth rate for the Indian economy. It has been said that India’s additional energy requirements are estimated to be 30,000 MW by 2022 and 63,000 MW by 2032 and that these targets can only be met by ending India’s isolation from receipt of nuclear R&D, fuel and reactor markets.

There have been similar opinions on the US side. For example, it has been argued that the arrangement had the potential of creating an opportunity of about US\$150 billion investment during the coming years in India’s energy sector for the construction of nuclear power plants of which the US nuclear firms would get a sizable share.⁴

It has also been argued that the deal will also positively contribute towards global environmental problems. In this regard, it has been said that the deal will help reduce pressure on fossil fuels at a time when Indian economy is showing great progress by allowing India to tap alternate sources of energy, thus helping manage the issues like global warming. For example, when India was granted the waiver by the NSG on September 6, 2008, the UK supported the deal on the grounds that the NSG’s decision would make a “significant contribution” to global energy and climate security.⁵

Some aspects of the US-India nuclear deal, however, remain vague in nature because of certain disagreements between the two countries on the interpretation of various terms of the deal.⁶ For example, doubts remain

³ “United States and India: Strategic Partnership,” *US Department of State*, March 2, 2006, <http://2001-2009.state.gov/p/sca/rls/fs/2006/62422.htm>

⁴ Dafna Linzer, “Bush Officials Defend India Nuclear Deal,” *Washington Post*, July 20, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/19/AR2005071901847.html>

⁵ “Britain Hails Landmark US-India N-deal,” *Hindustan Times*, September 6, 2008, <http://www.hindustantimes.com/world/britain-hails-landmark-us-india-n-deal/story-qojO9U1J07Pt5rkIfyMbCM.html>

⁶ P. R. Chari, ed., *Indo-US Nuclear Deal: Seeking Synergy in Bilateralism* (New Delhi: Routledge, 2009), 1.

over the interrelationship between the Hyde Act and the 123 Agreement i.e. whether the domestic law (Hyde Act) or the international treaty (123 Agreement) would take precedence. Article 27 of the Vienna Convention on the Laws of Treaties states that, “A party may not invoke the provisions of its internal law as justification for its failure to perform its treaty obligations.”⁷ The Hyde Act is a domestic law passed by the United States, and in the past the United States has nullified the 1963 Tarapur Agreement by its Nuclear Non-Proliferation Act. This is a particular problem that may arise in case India decides to conduct nuclear tests. The 123 Agreement does not prevent India from testing; however, the United States has the right to demand return of nuclear reactors, fuel and technology supplied if India were to test or if the agreement is terminated for any other reason.

Moreover, under the agreement the United States has pledged to create “necessary conditions for India to have assured and full access to fuel its reactors” and will help India to create a strategic reserve of nuclear fuel. However, the United States maintains that the assurances of fuel supply in the 123 Agreement are not legally binding and that they were solemn Presidential commitments the administration intends to uphold. Problems have also arisen regarding the legal compensations in case of any nuclear accidents. Moreover, India’s Civil Nuclear Liability Act of 2010, which also assigns responsibility to the supplier for any nuclear accidents, has so far dissuaded the US nuclear firms from any commercial investment in India.

Nuclear Deal and the US-India Strategic Partnership

While economic, commercial and environmental factors might have played a facilitating role, the nuclear deal, however, should be situated within the broader parameters of changing dynamics of the US policy towards South Asia in the post-Cold War era. In this regard, the US-India nuclear deal has huge strategic worth that has helped Washington in consolidating its growing convergence with a new partner in the

⁷ <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

geopolitics of Asia. The nuclear deal is reflective of the increasing warmth in the bilateral relationship between the United States and India, whereas the denial of similar arrangement to Islamabad demonstrates the underlying problems in the US-Pakistan relationship.

The seeds for the conclusion of the nuclear deal between the two countries in 2008 can be found in the “Next Steps in Strategic Partnership (NSSP)” signed in 2004 between the two countries which envisioned a “strategic partnership” through expanding cooperation in the areas of technology, civil nuclear and civil space cooperation, as well as expanding dialogue on missile defence.⁸ Similarly, the deal was officially offered to India during the US Secretary of State Condoleezza Rice’s visit to India on March 16, 2005, that was aimed at further consolidation of the growing US-India ties. During her visit, Secretary Rice told the Indian leadership that the Bush administration had judged that the NSSP, though very important, were not “broad enough” to really encompass the kind of things Washington needed to do to take this relationship where it needed to go and that the President and the Secretary had developed the outline for a “decisively broader strategic partnership.” She said that its goal was “to help India become a major power in the 21st century” and that Washington “fully” understood its implications including its “military implications.”⁹

Since the end of the Cold War, Washington has looked favourably towards New Delhi while its relations with Islamabad have headed to an uncertain future. With the departure of the Soviet forces from Afghanistan, the US-Pakistan alliance of the 1980s deteriorated into a frosty relationship on account of certain old and new frictions. In this regard, Islamabad’s nuclear programme re-emerged as a major irritant in the US-Pakistan relationship that had caused serious troubles in this

⁸ Sanjeev Kumar Shrivastav, “Contours of the India-United States Strategic Partnership,” *IDSIA Comment*, September 29, 2009, http://www.idsa.in/idsastrategiccomments/ContoursoftheIndia-UnitedStatesStrategicPartnership_skshrivastav_290909

⁹ G. Balachandran, “Indo-US Relations: Perception and Reality,” *Strategic Analysis*, vol. 29, no. 2 (Apr-Jun 2005): 202.

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bilateral relationship during the 1970s when Pakistan accelerated its strategic nuclear programme in response to the growing nuclear strides by India as demonstrated by New Delhi's first nuclear tests in 1974. On the other hand, Kashmir and Afghanistan emerged as the new irritants in this increasingly shaky relationship. In this regard, Pakistan's policy in Kashmir in the wake of the mass uprising in the region and its choices in the post-Soviet Afghan civil war became increasingly inconsistent with the contours of the US global interests.

On the other hand, India emerged as a more promising partner in the region for the United States during the period. Washington started a "strategic dialogue" with India in 1992 and the two countries initiated joint naval exercises in the Indian Ocean in the same year. An important breakthrough in this regard was the visit by Madeleine Albright that was the first ever visit by a US Secretary of State in 14 years which helped solidify this nascent convergence. Economic relations between the two countries also improved from the early 1990s in the wake of India's economic reforms programme in 1991. Consequently, the US-India trade, which was little over US\$6 billion in 1989, reached US\$9.5 billion in 1996.¹⁰

The 1998 nuclear tests by India created a brief interregnum when Washington criticised India and described its act as "unjustified." However, things were soon back to normal when Washington and New Delhi entered into a reinvigorated and more comprehensive high-level strategic dialogue soon after the tests. This was a prolonged process that was led by the US Deputy Secretary of State Strobe Talbott and, on the Indian side, by Foreign Minister Jaswant Singh. These talks covered the entire gamut of the bilateral relationship that included the areas like non-proliferation, the shape of the evolving post-Cold War international system, terrorism, and developing strategic cooperation between the two states.

¹⁰ "Trade in Goods with India," *United States Census Bureau*, <https://www.census.gov/foreign-trade/balance/c5330.html>

The process became more energised in the wake of the 1999 Kargil Crisis when the US openly supported India and pressurised Pakistan to pull back the forces from the captured territory along the Line of Control (LoC) in Kashmir. This helped Washington win over the hearts and minds of the Indian leadership. Soon after the Kargil Crisis, the State Department's Senior Adviser for South Asia, Mathew Daley stated that the days of "even-handedness and balance" in the US policy towards India and Pakistan were now over. He said that the US relations with India and Pakistan were going to have their own separate vectors, trajectories and velocities and that at "any given moment, on any given topic, we might appear to be even-handed, but that will be an incidental outcome of a policy, not the objective of a policy."¹¹

The structure of President Clinton's visit to the region in 2000 thus demonstrated this shift in the US South Asia policy. Clinton spent only five hours in Pakistan, as opposed to five days in India, thereby highlighting the importance Washington accorded to India. Clinton's blunt message to Pakistan that the LoC could not be transgressed by force (a reference to the Kargil episode) echoed Indian policy that the LoC's sanctity should be upheld. On the other hand, India's growing alignment with the changing patterns of the US global agenda was demonstrated when India endorsed the logic of unilateral US withdrawal from the ABM treaty in May 2001, and Vajpayee described the United States as India's "natural partner" during his visit to Washington in 2001.

The events of 9/11 contributed positively to this process. The US-India strategic partnership further matured in the post-9/11 period despite the fact that Washington had to readjust its policy towards the region when Pakistan decided to cooperate with the United States in the "Global War against Terrorism." India readily endorsed Washington's decision to invade Afghanistan after 9/11 when the Taliban regime refused to hand over Osama bin Laden to the United States. India also quickly offered its military bases to the United States for its military operations in the region. India was so forthcoming in its offers that even US diplomats in

¹¹ "US No More to Pursue Balanced Policy," *Dawn*, July 23, 1999.

Delhi were surprised and the US Embassy had to seek written clarifications on the Indian offers of unstinting military support.¹²

Indeed, the US Ambassador to India, Robert D. Blackwill remarked in 2003, that “President George W. Bush has a global approach to US-India relations, consistent with the rise of India as a world power.” He said that “Washington wants to make New Delhi not just a regional ally, but a global partner.”¹³ Meanwhile, the two countries also signed a 10-year Defence Framework Agreement in 2005 that included Logistical Support Agreement, a Maritime Cooperation Pact, joint military exercises, expanded cooperation on missile defence, and increased exchanges of intelligence.¹⁴ This was a more comprehensive extension of the Agreed Minute on Defence Relations between the United States and India signed in January 1995. Following that the Bush administration described its “desire to transform relations with India” as “founded upon a strategic vision that transcends” even the “most pressing security concerns.”¹⁵

India now conducts more joint military exercises with the United States than any other country in the world. India has also become the single largest buyer of the US armaments apart from holding the distinction of being the largest importer of arms. The United States exported US\$68 million worth of equipment to India in 2010 and just four years later, that number rose to US\$2268 million. Moreover,

¹² C. Raja Mohan, *Crossing the Rubicon: The Shaping of India's New Foreign Policy* (New Delhi: Penguin Books, 2005), xii.

¹³ Sharif Shuja, “Why Washington is Warming to India,” *News Weekly*, May 31, 2003, <http://newsweekly.com.au/article.php?id=1419>

¹⁴ Mushahid Hussain, “Pakistan's Quest for Security and the Indo-US Nuclear Deal,” *Korean Journal of Defense Analysis*, vol. 18, no. 2 (Summer 2006): 169.

¹⁵ “The US and India: An Emerging Entente?,” Remarks for the House International Relations Committee by R. Nicholas Burns, Under Secretary for Political Affairs and Robert G. Joseph, Under Secretary for Arms Control and International Security, September 5, 2005, <http://2001-2009.state.gov/p/us/rm/2005/52753.htm>

Washington also has a US\$13 billion backlog of defence orders from India as of 2015.¹⁶

The bilateral Defence Agreement has also been extended for another 10 years in 2015, whereby the two sides have decided to expand cooperation in joint development of military hardware, aircraft carriers, and fighter jet engines for India under the broader framework of what has been called as Defence Technology and Trade Initiative (DTTI). The US Defence Secretary Carter remarked after the conclusion of the agreement that these projects are “intended to blaze a trail for things to come” and that this was “just one more of the many signs of what a positive trajectory” that Washington and New Delhi continue to be on with the defence community here in India.¹⁷

The US policy of cultivating India in the region is aimed at confronting a number of strategic exigencies in the region and beyond. An important factor in this regard has been the US concern about the menace of terrorism. The United States has viewed India as a useful partner in this regard and over the period of time the two countries have expanded their cooperation on the issue. The first formal step towards this objective was taken during Albright’s visit to India in 1997 when the United States signed an “Agreement to Combat Terrorism” with India. In 2000, the two countries moved further and established a Joint Working Group on Counterterrorism.

Increasing convergence between the two countries on the issue was highlighted when in May 2011, the two countries launched Homeland Security Dialogue in order to expand bilateral cooperation in the domain of counterterrorism during the visit of US Homeland Security Secretary Janet Napolitano to New Delhi. This aimed at enhancing cooperation in countering terrorist threats, sharing information, protecting the global

¹⁶ “How the New India-US Defense Deal Would Impact Regional Security,” *DW*, <http://www.dw.com/en/how-the-new-india-us-defense-deal-would-impact-regional-security/a-18492143>

¹⁷ Jim Garamone, “US., India Sign 10-Year Defence Framework Agreement,” *DoD News*, <http://www.defense.gov/News-Article-View/Article/604775>

supply chain, combating illicit financing, enhancing cyber security, protecting critical security infrastructure, developing effective IED detection systems, and policing large cities.

Washington has also increasingly started viewing regional militant organizations such as Lashkar-e-Taiba (LeT) not just a problem for India but as a global threat on par with al Qaeda. Highlighting such US concerns regarding these militant organizations, American military commander Admiral Mike Mullen openly warned in July 2010 that the militant outfit was emerging as a “larger, regional and global threat.”¹⁸ Similarly, the US Secretary of Homeland Security Janet Napolitano remarked during her visit to India in 2011 that LeT was in the same league as al Qaeda in US eyes and “could be construed as a threat to the United States.”¹⁹

Similarly, India has also aligned itself more closely with the United States on various important issues related to the Middle East. For example, after the fall of Saddam Hussain India seriously considered sending its troops to Iraq; not under the banner of United Nations but alongside the United States. India also became more supportive of the US stance on the Iranian nuclear issue. India voted twice against Iran in the IAEA. In fact, just before the US Senate approved the nuclear deal, Prime Minister Manmohan Singh said that India would not like “another weapon state emerging in its neighborhood and it was opposed to Iran’s nuclear weapons ambitions.”²⁰ Moreover, India did not only reduce its oil purchases from Iran, it became colder towards various projects for importing Iranian gas that had been agreed previously.

In another important development in this regard, the United States has viewed India as a partner in dealing with some emergent terrorist threats in the Middle East. In a separate joint declaration on countering terrorism

¹⁸ “India, US Ink Counter-Terror Pact,” *Times of India*, July 23, 2010, http://articles.timesofindia.indiatimes.com/2010-07-23/india/28313875_1_counter-terror-border-security-11-type-attack

¹⁹ “Pakistan’s LeT Threat to US: Security Chief,” *AFP*, June 2, 2011.

²⁰ “India Opposes Iran’s Nuclear Weapons Ambition,” *Hindu*, September 30, 2008.

issued by the two countries during the 2015 session of the US-India Strategic and Commercial Dialogue underscored the shared worries about al Qaeda, Lashkar-e-Taiba, Jaish-e-Mohammad, and D-Company. The statement also included a reference to the “serious threat posed by ISIL/Da’esh” that the two sides affirmed to “degrade and defeat.”²¹

Though traditionally New Delhi has been supportive of the Arab causes, it has moved closer to Israel during the period, a key US ally in the Middle East. Indo-Israel relations have improved steadily during the period since the establishment of diplomatic relations between the two countries in 1992. In 1997, Israel’s President Ezer Weizman became the first head of the Jewish state to visit India. Israel was also one of the few nations that did not condemn India’s 1998 nuclear tests. In 2000, Jaswant Singh became the first Indian Foreign Minister to visit Israel. Similarly, in 2003, Ariel Sharon became the first Israeli Prime Minister to visit India. Since then, there have been regular exchange of high level visits between the two countries, and 2015 witnessed the visit by the Indian President Pranab Mukherjee to Israel, the first ever by an Indian head of state.

Military and strategic relations have also strengthened between the two countries during the period. During 2002–07, India bought US\$5 billion worth of defence equipment from Israel and the total defence trade between the two countries in the past decade is now worth more than US\$9 billion making India the largest buyer of Israeli defence products.²² Similarly, it was the first time that India refused to vote against Israel at the United Nations when it abstained from a UN Human Rights Council (HRC) vote that condemned Israel’s actions during its seven-week-long military operation in the Gaza Strip in 2014. Interestingly, Israeli strategic analysts harbour the idea of establishment of an “Asian alliance” comprising India, Israel, South Korea, Japan and Australia that could

²¹ “US-India Joint Statement on Combating Terrorism,” September 23, 2015, <http://www.state.gov/r/pa/prs/ps/2015/09/247201.htm>

²² Saif Khalid, “The beginning of an Israel-India ‘romance’?,” *Al Jazeera*, <http://www.aljazeera.com/indepth/features/2015/07/israel-india-gaza-150709005707545.html>

work together to deal with regional strategic issues including missile defence.²³

The United States has also viewed India favorably in its efforts to stabilise Afghanistan that can help connect South Asia and Central Asia. For example, the US Secretary of State Hillary Clinton said in 2011, that Washington was making a “strategic bet on India’s future” and described India as a “linchpin” in the new US “vision for a more economically integrated and politically stable South and Central Asia.”²⁴ The US has viewed the historically warm relations between Kabul and New Delhi as important for the strengthening of the post-Taliban regime in Afghanistan. In this regard, India has emerged as a major source of economic aid for the post-Taliban governments in Afghanistan. India has become Afghanistan’s sixth largest donor, providing the country with some US\$2 billion since 2001. India is also the first country to sign a security pact with Afghanistan: the 2011 Strategic Partnership Agreement (SPA) that has been welcomed and endorsed by the United States. This commits India to further security training and potential equipment assistance to Afghanistan.

Another important factor behind the US preference for India in the region is the reevaluation of its China policy by Washington at the end of the Cold War, whereby the United States revamped its de facto alliance of the 1980s with China in confronting the Soviet expansionism in Afghanistan. The United States now initiated a strategy of aggressively filling the power gap in Asia following the demise of the USSR and embarked upon a new containment policy towards communist China. The 1995 US Security Strategy for the East Asia-Pacific region stated that “if the American presence in Asia were removed, the security of Asia would

²³ “India-Israel Bilateral Relations: Current Status and Future Prospects,” *Institute for Defence Studies and Analysis*, http://www.idsa.in/event/11thIDSABESADialogue_bilateralrelations

²⁴ Hillary Clinton, “America’s Pacific Century,” *Foreign Policy*, October 11, 2011, <http://foreignpolicy.com/2011/10/11/americas-pacific-century/>

be imperiled with consequences for Asia and America alike.”²⁵ The US-Japan Security Alliance was renewed in 1996 and in September 1997, Revised Guidelines for US-Japan Defence Cooperation strengthened this security alliance. Similarly, the United States continued to strengthen its bilateral security alignments in Asia with countries like Philippines, South Korea, Thailand and Australia during the 1990s.

In this regard, Washington viewed India as a new partner in its Asia policy that could act as a counterbalance to China in the region. It was in this context that the 2002 *US National Security Strategy* clearly stated that the “US interests required a strong relationship with India” because India could aid the US in creating a “strategically stable Asia.”²⁶ Washington thus initiated joint naval patrolling of the Strait of Malacca with the Indian Navy in 2002 that has been viewed with unease in Beijing as most of the oil imported by China passes through this strait. Moreover, the United States and India also re-launched their naval exercises in the area in 2002, which had been named as the “Malabar Exercises” and had been put on hold in the wake of the 1998 Indian nuclear tests. Similarly, the Obama administration noted in 2011, that India plays a central role in US strategy towards the larger “Indo-Pacific” region and that “India’s greater role on the world stage will enhance peace and security.”²⁷

During the period India has also moved closer to some important US allies in the region, particularly Japan, arousing apprehensions in Beijing. In this regard, the “Malabar Exercises” were expanded in September 2007, which led Beijing express concerns that the traditional allies of the United States in the area i.e. Singapore, Australia and Japan all joined India in the “Malabar 07” naval exercises and described these as the “concert of democracies.”²⁸ These trilateral naval exercises between

²⁵ David L. Asher, “A US-Japan Alliance for the Next Century,” *Orbis*, vol. 41, no. 3 (Summer 1997): 358-9.

²⁶ Shehzad H. Qazi, “United States’ Attempt to Balance the Rise of China in Asia,” *IPRI Journal*, 9(2) (Summer 2009): 39.

²⁷ Hillary Clinton, op. cit.

²⁸ Franz-Stefan Gady, “Confirmed: Japan Will Permanently Join US-India Naval Exercises,” *The Diplomat*, October 13, 2015,

India, Japan and the United States are now being institutionalised as a regular feature starting from their naval drills in the Bay of Bengal in October 2015, covering the “full spectrum of maneuvers.”²⁹

The United States and India along with Japan have also found common ground in the South China Sea amidst the US “rebalance” or “pivot” to Asia. India’s “Look East” policy and the US “pivot” to Asia have thus become mutually reinforcing. During his visit to New Delhi in 2012, the US Defence Secretary Leon Panetta described India as “lynchpin” of the US rebalancing strategy in Asia.³⁰ Similarly, the joint communiqué issued by the United States and India at the end of Obama’s visit to India in 2015, included a line about the “importance of safeguarding maritime security and ensuring freedom of navigation and over-flight throughout the region, especially in the South China Sea.”³¹

Similarly, the three countries have also initiated a trilateral dialogue on security issues. In their first-ever ministerial dialogue in New York in September 2015, India, Japan and the United States highlighted their “growing convergence” of interests in the Indo-Pacific region, underlined by “the importance of international law and peaceful settlement of disputes; freedom of navigation and over flight; and unimpeded lawful commerce, including in the South China Sea.”³²

<http://thediplomat.com/2015/10/confirmed-japan-will-permanently-join-us-india-naval-exercises/>

²⁹ “India, US, Japan Kick off Naval Drills Likely to Annoy China,” *CNBC News*, October 13, 2015, <http://www.cnbc.com/2015/10/12/india-us-japan-hold-naval-drills-in-bay-of-bengal-china-concerned.html>

³⁰ Manu Pubby, “US says India ‘Lynchpin’ of Rebalancing Strategy,” *Indian Express*, June 7, 2012, <http://archive.indianexpress.com/news/us-says-india-lynchpin--of-rebalancing-strategy/958842/>

³¹ Peter Baker and Gardiner Harris, “U.S. and India Share Sense of Unease Over China,” *New York Times*, January 26, 2015, http://www.nytimes.com/2015/01/27/world/us-and-india-share-sense-of-unease-over-china.html?_r=0

³² “Inaugural US-India-Japan Trilateral Ministerial,” September 29, 2015, <http://www.state.gov/r/pa/prs/ps/2015/09/247483.htm>

It has been in this context that China has voiced deep concerns about the increasingly close relationship between the United States and India. China has been particularly concerned about expanding joint Indo-US military exercises in the post-9/11 period. China is also concerned that India's military collaboration with the United States and its traditional allies, like Australia, Japan and Singapore, can be an attempt to set up what it calls an "Asian" NATO (North Atlantic Treaty Organization) and to encircle it eventually.³³

China has thus also expressed its concerns about the US-India nuclear deal. China has viewed the deal as discriminatory that could affect the balance in the region. For example, a commentary in *People's Daily* stated that "Whether it is motivated by geopolitical considerations or commercial interests, the US-India nuclear agreement has constituted a major blow to the international non-proliferation regime" and that it highlighted "the United States' multiple standards on non-proliferation issues."³⁴

China has also expressed its displeasure at the special treatment of the Indian case at NSG. Though it did not block the NSG waiver to India, it argued that the Group should "equally address the aspirations of all parties," an implicit reference to Pakistan.³⁵ Furthermore, China has responded to the US nuclear deal with India by expediting its own nuclear cooperation with Pakistan. In this regard, despite the expression of "concerns" by the United States, China has announced the construction of new reactors in Pakistan that are grandfathered by the earlier existing nuclear agreements between the two countries. These include doubling

³³ Praful Bidwai, "US Exercising India's Military Muscles," *Asia Times Online*, September 8, 2007, http://www.atimes.com/atimes/South_Asia/II08Df01.html

³⁴ Chris Buckley, "China State Paper Lashes India-US Nuclear Deal," *Reuters*, September 1, 2008, <http://in.reuters.com/article/oilRpt/idINPEK7195620080901?pageNumber=2&virtualBrandChannel=0&sp=true>

³⁵ "NSG should address "aspirations" of Others too," *Economic Times*, September 6, 2008, http://articles.economictimes.indiatimes.com/2008-09-06/news/28446264_1_nuclear-power-nsg-cheng-jingye

the size of Chashma Nuclear Power Plant in Northern Punjab and construction of two newly-designed advanced ACP-1000 nuclear power plants at Karachi.³⁶

Strategic Consequences of the Deal

Impact on the Non-proliferation Regime

Ironically, Washington and its allies have justified the nuclear deal with India on the ground that the arrangement will help advance the non-proliferation framework. One of the architects of the Indo-US nuclear deal, the former Under Secretary of State of Political Affairs, Nicholas Burns remarked that the nuclear agreement is because of “India’s trust, its credibility, the fact that it has promised to create a state-of-the-art facility, monitored by the IAEA, to begin a new export control regime in place, because it has not proliferated the nuclear technology.”³⁷ Similarly, when India was granted NSG waiver, US National Security Council Spokesman Gordon Johndroe remarked that “this is a historic achievement that strengthens global non-proliferation principles” and that the United States thanks the participating governments in the NSG for their outstanding efforts and cooperation “to welcome India into the global non-proliferation community.”³⁸

The deal, however, has led to serious negative consequences for the global non-proliferation regime. According to non-proliferation norms, only those countries that are parties to the Non-Proliferation Treaty (NPT) have a recognised right of access to peaceful uses of nuclear

³⁶ Glenn Kessler, “Washington Objects to China-Pakistan Nuclear Deal,” *Washington Post*, June 14, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/14/AR2010061404680.html>

³⁷ “Pakistan not eligible for similar n-deal: Burns,” *Hindu*, August 1, 2008, <http://www.thehindu.com/todays-paper/tp-international/pakistan-not-eligible-for-similar-ndeal-burns/article1306182.ece>

³⁸ “US Hails NSG Waiver as Historic Achievement,” *India Today*, September 6, 2008, <http://indiatoday.intoday.in/story/US+hails+NSG+waiver+as+historic+achievement/1/14733.html>

energy and an obligation to cooperate on civilian nuclear technology. It was on the basis of these principles that a separate Nuclear Suppliers Group was established soon after India's first nuclear test in 1974 to hinder the transfer of nuclear technology to countries lying outside the fold of NPT in order to deter them from following the nuclear path. Paradoxically, through this deal, India has been "rewarded" by the same institution that had been originally created to punish it.

So the NSG was originally created to discourage and punish the potential violators of the non-proliferation norms and a number of guidelines were approved for nuclear exports, including reactors and fuel. Moreover, these guidelines also conditioned such exports on comprehensive safeguards by the IAEA which ensures that nuclear transfers are not diverted from the peaceful uses to weapons programmes. Granting of a special waiver to India by the NSG and the transfer of nuclear technology and fuel to New Delhi at a time when India has not signed the NPT is thus contrary to non-proliferation norms.

The deal is thus tantamount to rewarding New Delhi as it implicitly recognises India's *de facto* status even without signing the NPT. As noticed by Charles D. Ferguson, President of the Federation of American Scientists, "the deal as structured has given implicit US approval to India's nuclear weapons program under the guise of bringing India into "the non-proliferation mainstream."³⁹

The deal also does not care about India's potential of vertical proliferation as a result of this arrangement. As a result of its new arrangement with the IAEA, India has put 14 of its 22 nuclear reactors whether operational or under construction as well as all the future civilian nuclear reactors under the safeguards. However, under the terms of the deal, India retains the right to decide which of the future reactors will be designated as civilian. The deal also does not impose any limitation on India's nuclear weapons programme like bringing it to the fold of Fissile Material Cut-off Treaty (FMCT) or even securing India's accession to the

³⁹ Charles D. Ferguson, "Reshaping the US-India Nuclear Deal," *Arms Control Today*, http://www.armscontrol.org/act/2008_04/Ferguson

Comprehensive Test Ban Treaty. India's stance toward FMCT remains lukewarm as it maintains that its scope should remain limited to future production and not to the existing stockpiles. Similarly, by providing India access to international uranium market, the deal has also spared its meager domestic reserves of uranium to be fully utilised for strategic purposes.

Thus, for all practical purposes, the deal has enabled India's strategic nuclear programme to move vertically upward in a more relaxed environment. The only agreement is India's voluntary moratorium on conducting new nuclear tests which it says can be done if the supreme national security interests are at stake. In such a case the deal would be scrapped but a caveat exists even in this regard as Washington would sympathetically consider the peculiar circumstances that have forced India to resume its nuclear tests. Thus the particular geopolitical factors might force Washington to carry on with the nuclear deal.

Furthermore, by extending a benefit to India that is only the prerogative of the NPT signatories, the deal has given a message to the aspirants of nuclear status that the US non-proliferation measures are not a serious business and that these are only a "smoke screen" for its geopolitical ambitions. This means that all states can go nuclear and finally can get an international legitimacy.

Implications for the South Asian Strategic Stability

Following 1998 nuclear tests, the region has witnessed a succession of nuclear-tinged crises including the 1999 Kargil Crisis, the Twin-Peak Crisis of 2001-02 and then the Mumbai Mini-Crisis of 2008. These crises were resolved through a complex process. In this process, not only the complex dynamics of nuclear deterrence played their part but the United States also emerged as the "pivotal deterrence" to bring down the tempers. The nuclear deal has confounded the role of this stabilising US factor in the region in the eyes of Pakistani decision-makers. The special treatment accorded by Washington to New Delhi in extending civil nuclear cooperation has contributed to the erosion of US impartiality that

may be a dangerous factor in any future stand-off between India and Pakistan in this crisis-prone region.

The nuclear deal thus affects the strategic landscape in the region in a significant way. It has caused an upset in the precarious psychological nuclear balance that has existed in the region following its overt nuclearisation in 1998. The deal has also brought strategic instability in the region in another way: it has fuelled an arms race between India and Pakistan. Given that the region has got the distinction of being a “nuclear flashpoint” and is prone to crises and wars, such a nuclear arms race is particularly worrying. Although the United States has claimed that the deal strictly lies in the civilian domain i.e. mainly for producing electricity, it has augmented India’s potential to enlarge its strategic nuclear domain. As discussed before, India has limited reserves of uranium ore that account for only 1% of the world’s known uranium reserves. Without the deal India faces an unhappy choice whether to use this limited stockpile for civilian purposes or for producing nuclear weapons. Providing an unhindered and unlimited supply of nuclear fuel under the deal has made it possible for India to use its indigenous limited uranium reserves entirely for strategic purposes.

Though not an ideal ingredient, reactor-grade plutonium can also be used in place of weapon-grade plutonium to make nuclear devices. The deal also did not place the previously produced spent fuel under safeguards which can be used to produce reactor-grade plutonium and creates a potential of production of hundreds of nuclear warheads. Moreover, this pool of unsafeguarded spent fuel can be used to run India’s planned fast breeders which will bring manifold increase in India’s production of weapon-grade plutonium.

When looked at in the context of other areas of cooperation between India and the United States in the wake of their strategic partnership, the situation appears more explosive. The US cooperation with India in the field of space programme, missile defence and other high-tech domains further strengthens New Delhi’s nuclear delivery system, including its nuclear submarine project. India’s access to the dual-use technology, particularly in the domain of its Fast Breeder Programme, increases India’s potential to augment its nuclear weapons programme. All this has

come despite the fact that historically India's proliferation record has remained problematic.⁴⁰

This is forcing Pakistan to increase its production of uranium and plutonium for its strategic nuclear programme in order to maintain the desired minimum credible deterrence. As a result, Pakistan's position on the Fissile Material Cutoff Treaty (FMCT) is expected to become further hardened, although it has become abundantly clear that Pakistan is not blocking negotiations on the FMCT single-handedly. Pakistan believes that the deal has a significant potential of tilting the balance of power in South Asia in favour of India. Islamabad subsequently warned IAEA and NSG members that the deal would impair non-proliferation efforts and increase the chances of a nuclear arms race in the sub-continent. Pakistan also demanded that "There should be a model agreement that could be signed with any country that meets the criteria. It should not be country-specific."⁴¹

Conclusion

The US-India nuclear deal remains essentially strategic in nature, strengthening the areas where the geopolitical interests of the two

⁴⁰ For example, David Albright, President of the Institute of Science and International Security, noted during a briefing that "In the 1980s, India used many of the same front companies as the AQ Khan network, including Trade Fin in South Africa." Also see Jeffrey Lewis, "India's Non-proliferation Record," *Arms Control Wonk*, September 7, 2005, <http://lewis.armscontrolwonk.com/archive/762/indias-non-proliferation-record>. Similarly, US Immigration and Customs Enforcement are on record having announced that Karni, an Israeli citizen living in South Africa, had pleaded guilty to exporting items to India that are "controlled for nuclear non-proliferation reasons." Paul Kerr, "New Details Emerge on Pakistani Networks," *Arms Control Today*, May 1, 2005, http://www.armscontrol.org/act/2005_05/PakistaniNetwork. Other such instances have also been documented elsewhere.

⁴¹ Jeremy Page, "Pakistan Warns that US-India Nuclear Deal Could Lead to New Arms Race," *Times*, July 25, 2008, <http://www.timesonline.co.uk/tol/news/world/asia/article4389924.ece>

countries overlap. It has helped the United States in elevating its relationship with India from “strategic” to a “strategic-plus” level. This, however, has not only dented the global non-proliferation regime, but has also negatively impacted the cause of strategic stability in South Asia. Keeping in view India’s goals for producing nuclear energy, the nuclear deal will only cater to about 5 per cent of India’s projected need of electricity in 2020. This is much below then other major countries relying on nuclear energy e.g. 20 per cent in case of the United States. Today, more than nine years later, much of the expected nuclear trade between the two countries has yet to materialise.

Starting from the famous “Atoms for Peace,” Washington’s more recent “nuclear deals” with new partners form part of the US diplomatic manoeuvring at the global stage, whereby it has used its advanced nuclear technology to meet its strategic ends. The deal has facilitated Washington in developing and strengthening new partnerships in order to face multiple challenges in this increasingly multipolar world where China factor is reshaping the regional and global order and where “greater Middle East” has become an increasingly uncertain strategic realm. The deal has thus become a “symbol” of emerging rapprochement between the two historically “estranged democracies” that have increasingly sought greater convergence in their relationship in the post-Cold War and post-9/11 world in order to meet the shared exigencies of changing international and regional environment.