

## INDO-US NUCLEAR DEAL: ALTERING GLOBAL NUCLEAR ORDER

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The ratification of the unprecedented Indo-US nuclear deal by the United States Congress and the signing of related legislation by President Bush on October 8, 2008 marked a remarkable new development in global nuclear affairs. The finalisation of this deal will have serious national, regional, and international consequences. It will give a tremendous boost to India's existing nuclear infrastructure through direct foreign investment which will increase India's capacity for power generation and will also improve, qualitatively and quantitatively, its nuclear arsenal. In order to facilitate this deal, the United States has already amended its nuclear proliferation laws and regulations which placed restrictions on nuclear-related exports. In Washington's view, this deal is favourable to its commercial interests within the nuclear industry. This American pursuit of commercial interests will go on to alter the existing global nuclear order.

In the South Asian context, the deal would grant New Delhi the much sought after *de jure* nuclear weapon state status; enhance India's prestige and repute as a responsible nuclear weapon state in the region; cement Indo-US strategic partnership which would entail bolstering India's strategic capabilities, including nuclear weapons, and offensive and defensive missiles potential. Though the Indian nuclear trade with Nuclear Supplier Group would have an insignificant impact on Pakistan's nuclear deterrence in the near future, the Nuclear Supplier States' denial of a similar status for Pakistan generates a pessimistic impression about the country, which could have negative consequences. For instance, in the changed global nuclear order there would be more pressure on Islamabad to cap, roll back and ultimately eliminate its nuclear programme. This hostile environment would be disadvantageous for Pakistan's national security. The holistic strategic outcome of the deal would be an increase in both the

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conventional and non-conventional military might of India which would result in greater insecurity in South Asia in general, and for Pakistan in particular.

In the global milieu, the nuclear deal wears away almost four decades of

international consensus on nuclear proliferation. It obligated rewriting of international nuclear trade laws by Nuclear Suppliers Group (NSG); amendments in the International Atomic Energy Agency (IAEA) safeguards manual; and further eroding the credibility of the Nuclear Non-proliferation Treaty (NPT). The terminology applied in the IAEA safeguard manual; and NSG Statement on Civil Nuclear Cooperation with India, reveals that these arrangements are state-specific and detrimental to the nuclear non-proliferation regime. Sharon Squassoni pointed out: "... a group of 45 countries dealt a serious blow to the world's nuclear nonproliferation regime. Succumbing to enormous pressure exerted by President Bush and his administration, the Nuclear Suppliers Group agreed to allow nuclear trade once more with India – a country that has not signed the Nuclear Non-proliferation Treaty and tested nuclear weapons in 1974 and 1998."<sup>1</sup>

The amendments in the IAEA and NSG procedures have not only legitimised the nuclear trade between Indian and the nuclear supplier states, but also altered the global nuclear order. Conversely, the Bush Administration and its like-minded Western governments endorsed the IAEA and NSG decrees by claiming that these arrangements would have constructive implications for global nuclear nonproliferation regime. These conflicting arguments raise the following questions: How would the Indo-US nuclear deal affect the prevalent global nuclear order? What are the main contours of the new global nuclear order? How would Pakistan readjust itself within this new emerging global nuclear order?

The following discussion would spell out the changes caused by the Indo-US nuclear deal in the shape of the safeguards agreement between the IAEA and India; subsequent alterations in the NSG laws to accommodate India; and ramification for the nuclear non-proliferation regime.

### **Contours of Nonproliferation Nuclear Order**

The global nuclear order, which has kept the nuclear proliferation regime intact, is based on the United States Atomic Energy Act of 1954; Non-Proliferation Treaty; the International Atomic Energy Agency, and the Nuclear Suppliers Group. This order was constituted with the realization of the fact that materials, technology and know-how relevant to the manufacture of nuclear weapons were bound to spread internationally. Indeed, some capabilities would have to spread if the benefits of civil nuclear power were to be realized. Knowledge would eventually diffuse and with it the ability to manufacture nuclear weapons.

The primary objective of the global nuclear order has been to prevent the proliferation of nuclear weapons as a by-product of nuclear cooperation for the promotion of peaceful use of nuclear technology. Importantly, most of the ordering

ideas and most of the desire and powers to realize those ideas came from the United States. On December 8, 1953, President Eisenhower in his speech before the General Assembly of the United Nations on Peaceful Uses of Atomic Energy stated:

The United States knows that peaceful power from atomic energy is no dream of the future. That capability, already proved, is here--now--today. Who can doubt, if the entire body of the world's scientists and engineers had adequate amounts of fissionable material with which to test and develop their ideas, that this capability would rapidly be transformed into universal, efficient, and economic usage.... The United States would be more than willing--it would be proud to take up with others principally involved: the development of plans where by such peaceful use of atomic energy would be expedited."<sup>2</sup>

In the same speech, President Eisenhower also proposed the establishment of the International Atomic Energy Agency for the purpose of devising methods whereby fissionable material would be allocated to serve the peaceful pursuits of mankind. Shortly after Eisenhower's speech, the U.S. Congress passed the 1954 Atomic Energy Act. This legislation permitted for the first time the wide use of atomic energy for peaceful purposes. The Act essentially ended the government's monopoly on technical data, and began efforts to support the growth of a private commercial nuclear industry.

Since 1954, the Atomic Energy Act (AEA) of 1954 has been governing US nuclear cooperation with its nuclear clients. The AEA requires US reactor and reactor fuel exports to be subjected to the terms of Section 123 of the AEA (42 U.S.C. 2153).<sup>3</sup> It specifies what ought to take place before nuclear cooperation occurs between the U.S. and the recipient state. Section 123, Clause A., states that the proposed agreement shall include the terms, conditions, duration, nature, and scope of cooperation, and lists nine criteria that the agreement must meet. These nine guarantees are as follows:

- 1 Safeguards on nuclear material and equipment transferred continue in perpetuity.
- 2 Full-scope safeguards are applied in non-nuclear weapon states.
- 3 Nothing transferred is used for any nuclear explosive device or for any other military purpose.
- 4 The US has the right of return if the cooperating state detonates a nuclear explosive device or terminates or abrogates an IAEA safeguards agreement.
- 5 There is no transfer of material or classified data without US consent.
- 6 Physical security is maintained.
- 7 There is no enrichment or reprocessing by the recipient state without prior approval.
- 8 Storage is approved by United States for plutonium and highly enriched uranium.
- 9 Anything produced through cooperation is subject to all of the above

requirements.<sup>4</sup>

The aforementioned section also contains a provision for the President to exempt an agreement from any of the above nine criteria. Importantly, an exempted agreement would not become effective unless the Congress adopts it, and there is enacted a joint resolution stating that the Congress does favour such agreement. In other words, both the chambers of Congress must approve the agreement if it does not contain all of the Section 123 a. requirements.

One of the most important constituents of this global nuclear order was the multilateral Nuclear Non-Proliferation Treaty (NPT). The Treaty provides the norm and the foundation for an international regime to prevent the spread of nuclear weapons around the world. The NPT permits vertical proliferation of nuclear weapons and prohibits the horizontal proliferation of nuclear weapons. According to the NPT, the states which tested their devices prior to January 1, 1967, are the nuclear weapon states — the United States, the Russian Federation, the United Kingdom, France and China, and remaining all members (187) of the Treaty are non-nuclear weapon states. The nuclear weapons states also commit to eventually eliminate their atomic arsenals (Article VI of the NPT). The NPT asserted, among other things, that the five states that had tested nuclear weapons prior to January 1, 1967 had legal rights to possess nuclear weapons. Other states could only join NPT by renouncing nuclear weapons and having their renunciation fully verified through international safeguards of the International Atomic Energy Agency.

The NPT-based order divided the world into two blocks—Nuclear Weapon States (NWS) and Non-Nuclear Weapon States (NNWS). Though a third block of states also exists having a few members, these states were treated outsiders, spoilers or rogue actors in the realm of nuclear proliferation. Two competing visions of the order emerged. The first entailed that the NWS—United States, Russian Federation, Britain, France and China—should sustain their nuclear monopoly. They have the legitimate right to defend themselves with nuclear weapons. It was illegitimate for NNWS to possess nuclear weapons. In the words of William Walker, “the nuclear order’s legitimacy therefore rested upon mutual obligation and reciprocity. And it rested heavily upon the notion that possession of nuclear weapons by the five acknowledged powers was a temporary trust and a trust that could be extended to no other nation-state.”<sup>5</sup>

The second involved an act of collective arrangement by the NWS to prevent horizontal proliferation. That is because the acquisition of nuclear weapons by additional states had an exceptional capacity to disrupt the power balance and create security dilemmas. Nuclear proliferation implied a constant destabilization of regional and global structures of power.<sup>6</sup>

In 1958, the International Atomic Energy Agency (IAEA) was constituted. The IAEA safeguards system was designed to prevent the diversion of nuclear material from peaceful uses to nuclear weapons or nuclear weapons-related activities. Though the central purpose of NPT is to prevent the spread of nuclear weapons, the Treaty permits the commercial usage of nuclear technology. The IAEA safeguards system works hand-in-hand with the nuclear export control system. The most basic export control requirements are contained in the NPT itself—that exports of nuclear equipment and material should take place only under IAEA safeguards; that the NWS should not in any way assist, encourage or induce any NNWS to manufacture or otherwise acquire nuclear weapons; and that NNWS undertake not to seek or receive any assistance in the manufacture of nuclear weapons and not to receive the transfer of nuclear weapons directly or indirectly. The non-nuclear weapon state recipient is subjected to full-scope safeguards. Safeguard measures, such as inspections and remote monitoring, are supposed to deter and detect misuses of civilian nuclear facilities and materials to build nuclear weapons. Ironically, the Iranian and North Korean nuclear imbroglios exposed the deficiencies in the IAEA comprehensive safeguards procedures. Moreover, India had also misused civilian nuclear facility (CIRUS) for manufacturing the atomic device.

The situation changed after the ‘peaceful’ Indian nuclear explosion on May 18, 1974. The Indian nuclear explosion not only enhanced insecurity of its neighbours, but also disturbed the nuclear suppliers and recipients relations. It manifested that the nuclear imports for commercial and peaceful purposes could be used to make nuclear weapons. That was not acceptable to the international community, which was supporting the NPT. The anti-nuclear weapons lobby interpreted the Indian nuclear explosion as an attempt to master the nuclear weapons know-how. In simple terms, it was a nuclear weapon explosion. The concern of the international community was natural. It was an attempt to change the rules of the games that were laid down by the NPT. Consequently, Canada terminated its nuclear fuel trade with India and Pakistan. The US endeavoured to establish an effective Nuclear Suppliers Group.

The nuclear supplier states have an interest in nuclear trade, but they are also against the horizontal proliferation of nuclear weapons. At the behest of the United States, the nuclear supplying states constituted the Nuclear Suppliers Group (NSG) in 1975. The primary purpose was to ensure that suppliers uniformly applied a comprehensive set of guidelines to ensure that nuclear cooperation did not contribute to nuclear weapons proliferation, and to involve a key non-NPT supplier, France, at that time. With the passage of time, NSG membership increased. The member states of NSG have voluntarily agreed to coordinate their export controls governing transfers of civilian nuclear material and nuclear-related equipment and technology to non-nuclear-weapon states (NNWS). All NSG decisions are made by

consensus.<sup>8</sup>

The NSG has two sets of guidelines listing the specific nuclear materials, equipment, and technologies that are subject to export controls. The NSG guidelines require that importing states provide assurances to NSG members that proposed deals would not contribute to the creation of nuclear weapons. Potential recipients are also expected to have physical security measures in place to prevent theft or unauthorised use of their imports, and to promise that nuclear materials and information will not be transferred to a third party without the explicit permission of the original exporter.<sup>9</sup> In addition, the final destination for any transfer must have IAEA safeguards in place. The IAEA is charged with verifying that NNWS are not illicitly pursuing nuclear weapons. The IAEA safeguards to prevent nuclear material or technology from being stolen or misappropriated for weapons include inspections, remote monitoring, applying of seals, and other measures.

The guidelines comprise two parts, each of which was created in response to a significant proliferation event that highlighted shortcomings in then-existing export control systems. Part I lists materials and technology designed specifically for nuclear use. These include fissile materials, nuclear reactors and equipment, and reprocessing and enrichment equipment. First published in 1978, Part I responded to India's diversion of nuclear imports for supposedly peaceful purposes to conduct a nuclear explosion in 1974. Part II identifies dual-use goods, which are non-nuclear items with legitimate civilian applications that can also be used to develop weapons. Machine tools and lasers are two types of dual-use goods. NSG members adopted Part II in 1992 after discovering how close Iraq came to realizing its nuclear weapons ambitions by illicitly employing dual-use imports in a covert nuclear weapons programme before the 1991 Persian Gulf War. Moreover, since 1992, the NSG has not allowed nuclear trade with non-NPT states.

In December 2002, the NSG agreed to strengthen its guidelines in an attempt to prevent and counter the threat of diversion of nuclear exports to nuclear terrorism. In their 2004 meeting, the NSG members adopted a 'catch-all' mechanism, which authorizes members to block any export suspected to be destined to a nuclear weapons programme even if the export does not appear on one of the control lists. To be eligible for importing Part I items from an NSG member, states must have comprehensive IAEA safeguards covering all their nuclear activities and facilities. In the case of Part II goods, IAEA safeguards are required only for the specific nuclear activity or facility that the import is destined for. Recognising the problems of nuclear smuggling, the UN Security Council unanimously adopted Resolution 1540 to address certain gaps in the nonproliferation regime. This Resolution requires states to enact and enforce effective legal and regulatory measures to prevent proliferation, with a particular focus on preventing proliferation activities of non-state actors.

Although this inherited twentieth century non-proliferation global nuclear order needs strengthening, the understandings and bargains and practices embedded in it should not and cannot be replaced for the benefit of one state. Nevertheless, the Indo-US nuclear deal will undermine this nuclear order. It has already been rendered inappropriate by fundamental changes in the IAEA safeguards and NSG trade laws, which are highly discriminatory, conflictual and destructive.

### **India: A Nuclear Maverick**

The United States recognizes India as a responsible state with advanced nuclear technology. President Bush has stated, "India is a responsible state with advanced nuclear technology and should therefore acquire the same benefits and advantages as other such states."<sup>10</sup> But many analysts disagree with President Bush's opinion about India. Is India a nuclear maverick? It has an impressive nuclear infrastructure, but does not adhere to the Nuclear Non-Proliferation Treaty to prevent the spread of nuclear weapons. New Delhi built its first bomb in 1974 by misusing Canadian and American civilian nuclear technological assistance. The CIRUS reactor was built by Canada, and its nuclear fuel was supplied by the United States. The understanding between the supplier states and recipient India was that the latter would not use the CIRUS for military purposes. Nevertheless, New Delhi violated the agreement and diverted plutonium from the CIRUS reactor for manufacturing and testing a nuclear device on May 18, 1974.

In addition, New Delhi has been using an array of trading companies to secretly acquire tons of Tributyl Phosphate, a chemical used to separate plutonium from spent nuclear fuel. Indian scientists also transferred sensitive technology to other states. In 2004, the State Department slapped sanctions on two Indian nuclear scientists alleged to have passed heavy-water technology to Iran. At least four Indian companies have been sanctioned over sales of missile technology to Tehran.<sup>11</sup>

Canada refused to sell India nuclear technology and fuel immediately after its 1974 nuclear explosion. The Bush Administration's decision to sell India nuclear technology and fuel brought a change in the three-decade-old Canadian nuclear policy vis-à-vis India. In 2005, Paul Martin's Liberal government reversed course and agreed to re-establish nuclear co-operation with India. The decision of Canadian government marked that, in addition to the United States, the other major nuclear supplier states would also heavily invest in the Indian nuclear sector. This assertion was proven correct on September 30, 2008, when France signed an agreement with India for civil nuclear cooperation.<sup>12</sup>

## **Bush Administration's Facilitating Role**

In their July 18, 2005 joint statement, the United States and India expressed the understanding to expand civil nuclear cooperation. The Bush Administration broke with long-standing US policy and openly acknowledged India as a legitimate nuclear power, ending New Delhi's 30-year quest for such recognition.<sup>13</sup> It has also initiated a process to relax domestic U.S. nuclear-related constraints without asking India for meaningful steps to strengthen global nonproliferation norms. Washington and New Delhi have successfully managed to get the approval for the IAEA-India Safeguards Agreement on August 1, 2008, and amendments in the NSG laws, which hinder the transfer of nuclear reactor technology and nuclear fuel to India, on September 6, 2008. These arrangements created a unique status for India as the first "legitimate" nuclear weapon state outside the NPT, with none of the responsibilities required by the Treaty, but many of its rights.

The US-India nuclear deal seems a *fait accompli* despite the Congressional calendar constrains for rapid approval. Under the existing procedures for approval (the Hyde Act and Atomic Energy Act), the agreement for cooperation would need to lie before the Congressional committees for no less than 30 days of consultation, after which a joint resolution of approval could be introduced. Current estimates of the number of legislative days left in the session fall short of the required 30 days.<sup>14</sup> Nonetheless, the Congress approved the deal. The Bush Administration generated an impression that the Indo-US nuclear deal would have political and economic dividends. Politically, it would strengthen Indo-US strategic partnership; and bring India into the ambit of the non-proliferation regime. In the economic realm, American business could earn up to worth \$100 billion as well as generate up to 27,000 new American jobs each year for a decade from the start of the enterprise.

## **India's Separation Plan**

The 123 Agreement in its original form obstructs the Indo-US nuclear trade. Simultaneously, the Indians are also determined to ensure the uninterrupted fuel supply or no repetition of the Tarapur reactor episode, i.e., suspension of low-enriched uranium to the reactor, which was built by U.S. firms. Washington and New Delhi chalked out a workable blueprint. According to it, the latter spelled out a separation plan on March 2, 2006. In a statement to Indian Parliament on March 7, 2006, the government identified 14 out of 22 power reactors to declare as civilian and agreed that IAEA safeguards would cover the civilian facilities. Six of them, already subject to other safeguard agreements, are expected to come under agency supervision by 2014 --the first ones as early as 2009. Only an additional eight will be placed under safeguards, not immediately but progressively up to 2014.<sup>15</sup>

## **The Hyde Act of 2006**

The Bush Administration agreed on the separation formula. It required, however, changes in its Atomic Energy Act (AEA) of 1954. Therefore, the Administration approached the Congress for legislation to adjust U.S. nonproliferation and export control laws and policies that heretofore have blocked full nuclear cooperation with India. While expressing support to the President's civil nuclear energy cooperation with India in principle, the House of Representative passed H.R. 5682—United States and India Nuclear Cooperation Promotion Act of 2006—by a vote of 359 to 68.. The Senate passed its version of H.R 5682 on November 16, 2006 by a vote of 85 to 12. On December 18, 2006, President Bush signed the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (Hyde Act) into law (P.L. 109-401), calling it a “historic agreement” that would help the United States and India meet the energy and security challenges of the 21st century. Notably, the Hyde Act provided the requisite waivers, with minor modifications, but it also retained the requirements for a joint resolution of Congress for such an agreement to enter into force and contained some restrictions.<sup>16</sup>

## **Safeguards Agreement between India and the IAEA**

On July 9, 2008, the Indian government submitted a draft of nuclear safeguards accord to the United Nations atomic watchdog International Atomic Energy Agency (IAEA) secretariat in Vienna.<sup>17</sup> In the draft, the government of India requested the Agency to conclude with it an agreement for the application of safeguards with respect to its civilian nuclear facilities. The approval of the India-specific safeguards agreement by the IAEA Board was a pre-condition for the approval of the deal by the US Congress. The draft was circulated to the Agency's 35-member board for their approval. On August 1, 2008, the IAEA approved by consensus an inspections agreement of indefinite duration with India.<sup>18</sup>

The IAEA chief Mohammed El Baradei stated that the Indian draft was “an Infcirc/66-type safeguards agreement based on the Agency’s standard safeguards practices and procedures” for states that are not party to the Nuclear Nonproliferation Treaty.<sup>19</sup> Prior to the approval, a few dissenting voices were raised by Iran, Ireland, Norway, Switzerland and Austria on the Indo-US nuclear deal to block the safeguards agreement. Pakistan also circulated a well-drafted document to draw the attention of the IAEA board of governors to the irregularities, which were committed for hasty approval of the safeguards agreement. The Pakistani document very eloquently maintained that IAEA was establishing a wrong tradition, but no one seemed inclined to agree with Pakistan’s stance.<sup>20</sup>

The IAEA has three models for a safeguards agreement: first, the Comprehensive Safeguards Agreement; second, the Facility-specific Safeguards Agreement; and third, the Voluntary Offer Agreements.<sup>21</sup> The Indian draft was claimed to be a Facility-specific Safeguards Agreement. The IAEA-India safeguards agreement will not disrupt India's nuclear weapons programme. Prime Minister Manmohan Singh claimed: "The agreement will in no way impinge on our strategic programme, which is entirely outside the purview of the IAEA safeguards agreement."<sup>22</sup>

The India-IAEA agreement is a hybrid of two models. India retains the right to take unspecified corrective measures to ensure uninterrupted operation of its civilian nuclear reactors in the event of a disruption in foreign fuel supplies. Secondly, Indian concerns about disruption of fuel supplies means that India could violate the safeguards agreement, as it did in the 1970s, at any time in the future. India's concurrence to safeguards is dependent on continuous access to fuel supplies as well as a strategic reserve of fuel over the lifetime of India's reactors. There is no mention of moving towards an additional protocol with the IAEA, which is another requirement of the agreement with the United States.

India has not filed a formal declaration regarding its civil nuclear facilities and materials with the IAEA. Its safeguards agreement, approved by the board of governors, did not contain a list of facilities or materials to be placed under IAEA safeguards.<sup>23</sup> There is no safeguard against the transfer or replication of imported nuclear technology to the benefit of the armed forces. The outcomes of the Safeguards Agreement between India and the IAEA are the following:

The approval of safeguards accord would limit international oversight of New Delhi's civilian facilities because of ambiguous wording. This limitation provides India an opportunity to transfer fissile material from the civilian facility to the nuclear facility.

The draft notes that India "may take corrective measures to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies." The phrasing appears to open the door for India to end IAEA oversight of some facilities, potentially using the plants to manufacture not fuel but fissile weapons material.

The section in which India lists the facilities to be under IAEA supervision was left blank. Although those facilities — 14 of the nation's 22 reactors — were listed in a separate and widely published Civil Nuclear Separation Plan drawn up two years ago by India, the empty annex is raising questions among critics.

### **NSG Statement on Civil Nuclear Cooperation with India**

On September 6, 2008, the 45-member Nuclear Suppliers Group (NSG) agreed in Vienna to exempt nuclear Non-proliferation Treaty (NPT) hold-out on India from its

guidelines that require comprehensive international safeguards as a condition of nuclear trade.<sup>24</sup> India's immunity set a precedent that facilitates nuclear trade between nuclear suppliers and recipient states without paying serious attention to the IAEA's comprehensive safeguards mechanism.<sup>25</sup>

The NSG waiver would not only facilitate numerous foreign firms to supply sophisticated nuclear technology to India, but it has also rolled back three decades of nuclear trade restrictions on India. These restrictions were imposed on India as a reaction to New Delhi's violation of peaceful nuclear cooperation agreements when it detonated its first nuclear bomb on May 18, 1974.

The Indo-US nuclear deal is likely to do far more harm than good for an essential institution designed to prevent proliferation — the NSG. According to the statement on Civil Nuclear Cooperation with India, the participating governments of the Nuclear Suppliers Group decided to do nuclear trade with India for strengthening the global nuclear non-proliferation regime. The objectives of this decision were spelled out in Article 1 of the statement. The following discussion critically examines Article I and highlights the inadequacy in its clauses:

NSG statement's Article 1, Clause A, states: *"Desire to contribute to the effectiveness and integrity of the global non-proliferation regime, and to the widest possible implementation of the provisions and objectives of the Treaty on the Non-Proliferation of Nuclear Weapons."* In practice, the integrity of nuclear non-proliferation regime would be severely damaged. That is because the Non-Proliferation Treaty's Article I states: "Each nuclear-weapon State Party to the Treaty undertakes ... and not in any way to assist, encourage, or induce any nonnuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices."<sup>26</sup> The waiver to India from NSG rules would legitimise a nuclear weapon state—United States—to transfer of nuclear technology to the non-nuclear weapon states—India. Though India in 1998 tested nuclear weapons and declared itself as a nuclear weapon state, the Non-Proliferation Treaty (NPT) Article IX, clause 3 states: "For the purpose of this Treaty (NPT), a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967."

Thus, India is a non-nuclear weapon state. There is a consensus among nuclear analysts that the Indo-US nuclear deal will improve Indian nuclear infrastructure, which will have a positive impact on the Indian nuclear weapons program. Daryl G. Kimball argued: "Also, nuclear fuel sales to India for Indian power reactors may marginally help increase India's energy output, but at the same time it will free up India's limited domestic uranium supplies to be used exclusively for bomb-making."<sup>27</sup>

New Delhi continues to produce fissile material and expand its nuclear arsenal. Therefore, the Indo-US nuclear deal would encourage rather than discourage the Indian nuclear weapons programme. This attitude of encouragement is a violation of Article 1 of the NPT; thereby; the NSG statement Article 1, clause A, is based on wrong perceptions.

The NSG statement Article 1, Clause B, states, *“Seek to avert the further spread of nuclear weapons.”* And, Clause C contains: *“Wish to pursue mechanisms to affect positively the non-proliferation commitments and actions of all states.”* The special treatment of India by the NSG sets a precedent which encourages many states to withdraw from the NPT and still continue receiving nuclear-related assistance from the NSG states. That will also encourage pronuclear weapons lobbies within Iran and North Korea. The nuclearisation of Iran would unleash a nuclear arms race in the Middle East. In short, instead of averting the further spread of nuclear weapons, the Indo-US deal is encouraging nuclear weapons proliferation.

In addition, in the context of India, it would increase the Indian capacity to manufacture nuclear devices. India’s representatives in Vienna reiterated New Delhi’s intention to build up a strategic reserve of nuclear fuel to ensure that its reactors could operate for their lifetimes if outside supplies ever ceased. Daryl G. Kimball pointed out that: “In India's case, enrichment and reprocessing cooperation could actually help its nuclear bomb production programme because international safeguards cannot prevent the replication or use of such technologies for weapons purposes.”<sup>28</sup> Thus, the mechanism which has been envisaged by the NSG would negatively affect the non-proliferation commitments and actions.

The NSG Article 1, Clause D states: *“Seek to promote fundamental principles of safeguards and export controls for nuclear transfers for peaceful purposes.”* The operability of this clause will introduce a new pattern in the NSG procedures. It would relax the NSG safeguards demands. For instance, currently, the NSG requires that the recipient non-nuclear weapons State ought to observe the comprehensive IAEA safeguards. It means that all the nuclear facilities of the nonnuclear weapon State should be under the IAEA safeguards. Since 1992, the NSG has not allowed nuclear trade with non-NPT states because it has adopted a requirement for full-scope safeguards for trade with non-nuclear weapon states. The NSG statement Article 2, Clause 1& 2 accepted New Delhi’s safeguards agreement agreed with IAEA on August 1, 2008. The agreement between the government of India and the IAEA for the Application of Safeguards to Civilian Nuclear Facilities reveals that India would separate civilian nuclear facilities in a phased manner and to file a declaration regarding its civilian nuclear facilities with the IAEA, in accordance with its Separation Plan (circulated as INFCIRC/731). The acceptance of a separation plan by the NSG is a negation of its three-decadeold stance.

This decision of the NSG will have devastating repercussions for the nuclear non-proliferation regime. India has made no legally binding commitment to pursue nuclear disarmament in reciprocity to the waiver of the NSG. No doubt, it made promises to respect and honour the principles of the nuclear non-proliferation regime. Nevertheless, India's history of violating its peaceful nuclear use agreements to build nuclear weapons provides little confidence in India's promises, especially if the consequences of non-compliance are not made clear by India's future partners: the nuclear supplier states. Secondly, the NSG did not make export transfers to India conditional on the stipulation that exports should be cut off automatically if India again tests a nuclear weapon or that sensitive nuclear technologies that can be used in weapons manufacture, should not be transferred to India. As a result, we can expect India to exploit differences between national country positions to its advantage, just as it has effectively exploited the strong US desire for this deal.<sup>29</sup>

### **Emerging Nuclear Order: India in an Advantageous Situation**

The arrangements did not explicitly recognize India as a nuclear weapons state (NWS) on a par with the U.S., Russia, Britain, France and China. But, for all practical purposes, India would now be treated just as the other nuclear weapon states. On July 22, 2008, Prime Minister Manmohan Singh stated in the Lok Sabha: "The nuclear agreement will end India's nuclear isolation and apartheid." He asserted that the agreements negotiated with the U.S., Russia, France and other countries would enable India to enter into international trade for civilian use without any interference with the nation's strategic nuclear programme.<sup>30</sup> On July 31, 2008, America's chief negotiator on the Indo-US nuclear deal, Nicolas Burns, stated: "We had to make this an exceptional agreement for India because of India's trust, its credibility, the fact that it has promised to create a state of the art reprocessing facility monitored fully by the International Atomic Energy Agency, because it has an export control regime in place and because it has not proliferated its own nuclear technology."<sup>31</sup>

Indian leaders have not gone beyond a voluntary statement saying they have no plans to test in the near future. Importantly, India has tested an advanced nuclear design only once, and it's likely to need to test it again.<sup>32</sup> Prime Minister Manmohan Singh had been very forthright in stating that the nuclear deal would in no way constrain New Delhi's right to resume testing. In addition, India has not signed the Comprehensive Test Ban Treaty. India's accumulation of a fuel bank to guard against disruption of supply reflects its desire to test nuclear devices in future. The approved IAEA safeguards agreement included language reflecting New Delhi's demand for a nuclear fuel bank. By incorporating this language, the IAEA could become a facilitator to the resumption of nuclear testing by India.

India's immunity has set a precedent that facilitates nuclear trade between

nuclear suppliers and recipient states without paying serious attention to the International Atomic Energy Agency's (IAEA) comprehensive safeguards mechanism. Importantly, the NSG waiver permits all the NSG members to conduct nuclear trade with India. Therefore, other countries, notably France and Russia, have expressed their desire to invest in the India nuclear market which has a potential of up to \$100 billion in investment. It was reported that India would soon sign nuclear cooperation agreements with these countries. This arrangement would be advantageous to New Delhi, but detrimental to the existing nuclear nonproliferation regime. Edward Markey pointed out: "Approval of this agreement undermines our efforts to dissuade countries like Iran and North Korea from developing nuclear weapons. By approving this agreement, all we are doing is creating incentives for other countries to withdraw from the Nuclear Nonproliferation Treaty. This deal will not advance America's interests or make the world safer. It will, however, deal a near fatal blow to the stability of the existing international non-proliferation regime."<sup>33</sup>

### **Pakistan and New Global Nuclear Order**

Pakistan in principle does not oppose nuclear trade for enhancing the peaceful use of nuclear technology. The Indo-U.S. deal, however, initially received a mixed and dismissive response from the Pakistani analysts because it appeared to be only India-specific and lacked universality. Nonetheless, Islamabad's official response was very calculated. It concluded that the NSG approval was inevitable because the key nuclear suppliers like the U.S., France and Russia supported the approval of the deal due to the prospects of financial benefits for their companies. But, the alternative view is that Islamabad caved in on the issue of Indo-U.S. nuclear deal due to American pressure and because it had a weak lobby in the international nuclear bureaucracy. It failed diplomatically or missed or ignored deliberately, opportunities to lobby successfully in order to secure a criteria-based nondiscriminatory system which would have treated equally all nuclear weapon states that have not signed the NPT.

The general impression is that Islamabad adopted this approach because its civil-military nuclear bureaucracy was convinced that the deal would not see the light of day. Secondly, Islamabad believes that once the precedent is set, it would easily be exploited to its own advantage. This is a popular, but misguided, narrative. The correct perspective is that the NSG waiver only relieves India from its guidelines that require comprehensive international safeguards as a precondition for nuclear trade. Therefore, in order to undertake nuclear trade with Pakistan, the NSG once again has to amend its trade rules. During that process there is a strong possibility that such an initiative would be blocked by the pro-Indian states. Thirdly, Islamabad concluded that due to the A. Q. Khan network, Washington would not negotiate a similar deal with Pakistan. President Bush, during his 2006 South Asian tour, categorically stated

that Pakistan and India were different countries with different needs and histories that were kept in view while designing American strategy. Admittedly, many analysts have different opinions. But a majority of them concur that Islamabad should chalk out a transparent strategy to deal with this new global nuclear order.

Pakistan's nuclear industry requires foreign inputs to modernize and economize the laboratories and production plants that make up the country's nuclear complex. On July 24, 2008, Shah Mahmood Qureshi, the Foreign Minister of Pakistan, stated his country's desire for a similar nuclear deal with the U.S.<sup>34</sup> Presently, Washington has ruled out any possibility to negotiate a similar deal with Pakistan. It was reported in the press that the Chinese had given the impression that they were prepared to assist Pakistan in the nuclear realm. In addition to China, Islamabad should also approach other nuclear supplier states, especially those that opposed the Indo-US nuclear deal draft in the August 2008 meeting of the NSG.

This discriminatory approach towards Pakistan will have its own consequences. The international community has to acknowledge the fact that in addition to the five NWS and India, Pakistan's nuclear weapons programme is here to stay, irrespective of how loudly the non-proliferation advocates argue their case against Islamabad. Pakistan also has indigenous capabilities to transfer nuclear technologies to other states. Until now, it has voluntarily controlled sensitive exports through broad regulatory powers exercised by the federal government and by keeping the relevant technology sector within state-owned enterprises. This situation could change in the future due to the international community's discriminatory approach and economic liberalization that leads to a greater role of the private sector.

Some segments of society in Pakistan believe that Islamabad does capitalise on the commercial and strategic potential of its nuclear know-how. This necessitates a greater focus by the international community on controlling nuclear technology trade and transfers from Pakistan through non-coercive strategies. More precisely, the practical solution to all the above-mentioned issues lies in the greater engagement of Islamabad within the nuclear sector, as has been the case with India. Moreover, Islamabad should revise its nuclear policy and must approach other like-minded states to maximise its options in the new global nuclear order.

## **Conclusion**

Nuclear commerce is emerging as one of the most lucrative businesses in the United State. The revisions in the 123 Agreement would expand the opportunities for Indo-U.S. cooperation, but undermine the United Nations Resolution 1540, which obligate all states to strengthen their domestic export control laws. More precisely, the agreement acknowledges India as a nuclear weapon state (excluding its military

facilities from inspections is a tacit recognition of its legitimacy) and facilitates its entry into the international nuclear energy market.

The 45-nations Nuclear Suppliers Group's decision on September 6, 2008 has given rise to a global competition among the nuclear supplier states. Numerous companies—French Areva, American General Electric, Japanese Hitachi Ltd, and Russian Atomic Energy Agency (Aosatom)—have been contesting for Indian contracts. These commercial nuclear activities underscore the transformation of the global nuclear order.

This unprecedented nuclear arrangement between the United States and India is bound to have far-reaching nuclear non-proliferation and security implications. Realistically, the India-specific exemption from NSG rules and IAEA safeguard standards do not bring India into the nuclear non-proliferation regime. Hence, the agreed arrangement between the NSG and India would further undermine the value of the NSG; weaken the already beleaguered NPT; and hasten the demise of the twentieth century nuclear non-proliferation regime. To conclude: the world is at the threshold of a new age of nuclear expansionism, which entails a new global nuclear order.

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Today, NSG is comprised of 45 nuclear supplier states, Argentina, Australia, Austria,

Belarus, Belgium, Brazil, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.

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