# US-INDIA NUCLEAR DEAL: ANALYSIS AND IMPLICATIONS FOR PAKISTAN

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## Introduction

Joint Statement of July 18, 2005 between President George W. Bush and Prime Minister Man Mohan Singh marked the beginning of a new era of US-India strategic partnership. Joint statement covered a wide range of important subjects; defense, economic cooperation, energy, space and agriculture. However, the center piece of the new relationship was undoubtedly the US-India agreement on civilian nuclear cooperation which has allowed India an access to US nuclear technology and flow of nuclear fuel.[1] The US persuaded its *friends and allies* i.e. the nuclear supplier group (NSG) of countries to do like wise.[2]

The US-India deal for peaceful nuclear cooperation has a historic and extraordinary significance. It has completely transformed the US-India relations bringing the two countries closer to each other than ever before. The deal envisages India to accept all the responsibilities and receive all the benefits of the world's leading nuclear states with advanced nuclear technology. It bestows India with the status of a *de facto* nuclear weapon state (NWS), and has provided a certificate of a responsible state with regards to nuclear proliferation. It has also allowed India not only to continue, but to potentially accelerate the buildup of its stockpile of nuclear weapon materials, which has wide ranging implications on the nonproliferation regime as well as stability in the region, particularly South Asia. The implications of the deal coupled with the US-India Defense Agreement have grave consequences for Pakistan. Indian access to fissile material from international market will entail a quantum increase in its nuclear arsenals. This factor will have substantial effects on Pakistan's minimum credible deterrence strategy.

The US-India nuclear deal for peaceful cooperation has sparked debate in the world. Critics of the deal see this development

as weakening of the non-proliferation regime and lessening of the credibility of nuclear Non Proliferation Treaty (NPT). The supporters of deal argue that India deserves full nuclear assistance for its impeccable record of non proliferation and being a responsible nuclear state. In such a scenario a Pakistani perspective on this deal is definitely needed. This paper focuses on bringing out a Pakistani perspective of the nuclear deal.

**History of US Nuclear Cooperation with India**

US- India nuclear cooperation is not a cold start however, history of US- India nuclear relationship is a blend of collision and collusion. In the beginning, Indian's nuclear programme was in friction with larger international non proliferation efforts. US- India nuclear cooperation started in mid 1950s, with the launch 'Atoms for Peace' proposal. India realized benefits of the 'Atoms for Peace' proposal, and promised to use nuclear technology for peaceful purposes only. On March 16, 1956, US actively promoted its nuclear cooperation with India by providing heavy water for the Canada-India Reactor (CIR).[3] This nuclear cooperation is a watershed in the history of nuclear proliferation.

By the end of the 1950s, despite differences on the IAEA mechanisms, the US had trained many Indian scientists for processing and handling plutonium, with an access to thousands of classified documents and reports.[4] India exploited the missing safeguard clauses of the CIRUS deal and used the plutonium produced by CIRUS in its so called Peaceful Nuclear Explosions (PNE) at Pokhran.[5] Following India's 1974 PNEs, US partially, while Canada immediately suspended all nuclear cooperation with India.

**Road to Nuclear Deal**

US always desired to have a close relationship with India due to its size, democratic values and economic potential. It was only latter's special ties with Soviet Union that came in the way during cold war. At the end of cold war, mending of fences between the two started in early 1990's. However, the advances were

imperilled by India's 1998 nuclear tests and the subsequent sanctions imposed by the US. Sanctions imposed against India after the May 1998 nuclear tests were finally waived in September 2001, by President Bush. Since then the US- India strategic relations have gained impetus.

On January 12, 2004, the Bush Administration and the Vajpayee government announced the 'Next Steps in Strategic Partnership' (NSSP) initiative. In this initiative the US and India agreed to expand cooperation in three specific areas: civilian nuclear activities, civilian space programmes and high-technology trade.

Sequel to such positive commitments by the US, on June 28, 2005, the US and India signed a 10-year Defence Framework Agreement. By signing this defence agreement the US and India entered into a new era of strategic partnership. These developments furthered the progress to the Indo-US civilian nuclear cooperation agreement.

**Indian Objectives**

The US-India civilian nuclear cooperation deal has been driven by a range of factors. India's motivation derives from number of considerations. Some of which are:-

- The deal provides a useful instrument to produce a paradigm shift in foreign policy and allows for deeper engagement with the US.
- It provides India with a workaround to deal with the non proliferation regime.
- Get recognition as *de facto* NWS; and accrue benefits as NWS without signing NPT.
- Overcome domestic shortage of uranium for its nuclear power programme.
- Get rid of technology denial and nuclear isolation.

**US Objectives**

Some of the US objectives in concluding the deal are as following:-

- Balance China's power.
- Transforming the relationship between the US and India and deepening India's integration with NSG and IAEA.
- Achieve a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan and China.
- Secure India's full participation in the Proliferation Security Initiative (PSI).
- Achieve congruence of Indian policy towards Iran.
- Exploit commercial potential for US nuclear industry by participating in the projected build up of nuclear power plants in India.

**Key Steps in Finalising the Deal**

In general perception, the US-India nuclear deal has been finalised since 2005. However, several key steps were required to be taken before a nuclear cooperation agreement could be implemented with India. It took more than three years to come to fruition as it had to go through several complex stages, including amendment of US domestic law, a civil-military nuclear separation plan in India, an India-IAEA safeguards (inspections) agreement and the grant of an exemption for India by the NSG; an export-control cartel that had been formed mainly in response to India's first nuclear test in 1974. J.Hyde Act 2006 was signed on December 18, 2006 that removed the legal impediments for proceeding with the deal.

On August 18, 2008, the IAEA Board of Governors approved, and on February 2, 2009, India signed an India-specific safeguards agreement with the IAEA. Once India brings this agreement into force, inspections will begin in a phased manner on the civilian nuclear installations India has identified in its Separation Plan.[6]

The next step was to approach NSG to grant a waiver to India to commence civilian nuclear trade. The 45-nation NSG granted the waiver to India on September 6, 2008 allowing it to access civilian nuclear technology and fuel from other countries.[7]

The implementation of this waiver made India the only known country with nuclear weapons which is not a party to NPT but is still allowed to carry out nuclear commerce with the rest of the world. Finally the 123 Agreement; the bilateral agreement on nuclear cooperation for peace full purposes, was signed by US Secretary of State and Indian Minister for External Affairs on October 10, 2008. All these steps have been successfully completed and finally approved by the US Congress which allows the US to provide expertise and nuclear fuel with nuclear reactors to India.

**Terms of the Deal**

Major contours of the deal as enunciated in J.Hyde Act and 123 Agreement include:-

- India will separate civilian and military nuclear facilities in a phased manner.
- According to March 2006 separation plan, 14 of 22 indigenous Indian power reactors will be placed under an India specific safeguards agreement (6 are already under safeguards). Future power reactors may also be placed under safeguards, if India declares them as civilian.
- India agrees to continue its moratorium on nuclear weapons testing.
- India commits to strengthening the security of its nuclear arsenals.
- India agrees to prevent the spread of enrichment and reprocessing technologies.
- India adheres to Missile Technology Control Regime (MTCR)and NSG guidelines.
- The US would deal with India for the purposes of cooperation in the civilian nuclear field at par with the five recognised NWS.
- US companies will be allowed to build nuclear reactors in India and provide nuclear fuel for civilian energy programme.
- India would be eligible to buy US dual-use nuclear technology.

- The US will ask its friends and allies to enable full peaceful civil nuclear energy cooperation and trade with India.
- India would work towards negotiating Fissile Material Cut off Treaty (FMCT).
- Advance nuclear energy research and development and training of experts and scientists.
- Development of strategic reserves of nuclear fuel by India to guard against any disruption of supply over life time of India's reactors (40years).
- If the agreement is terminated, the US will have the right to require the return of 'any nuclear material, equipment, non-nuclear material or components transferred' under the agreement as also any special fissionable material produced through their use.

Articles mentioned at 14a to k are part of J.Hyde Act and surprisingly there is no mention of such conditional ties in 123 Agreement. Indians rightly believe that they are not governed by J.Hyde Act .How would US achieve her foreign policy objectives mentioned in this Act is not understandable. One can argue that US has included these conditions to satisfy domestic legal requirements otherwise there is no binding on India to fulfill these requirements as the deal has already entered the operationalization phase.

**Indian Reservations to Henry J. Hyde Act 2006 and Ambiguities in the Deal**

Indian government, its scientific community and experts were not in agreement with number of clauses of Henry J. Hyde Act 2006. Their reservations were related to the US policy of opposition to acquisition of nuclear weapons by NNWS outside NPT, denial of enrichment technologies, restriction on nuclear testing, production of fissile materials for nuclear explosion and certain reporting and certification procedures.[8]

US President Bush seeking to allay concerns of India over the deal, assured Prime Minister Manmohan Singh that what India saw as prescriptive provisions would not be American foreign policy

stating that he said *"Extraneous and prescriptive provisions of the Hyde Act are only advisory and will not be my foreign policy"*[9]. In a statement issued shortly after signing the Henry J. Hyde US-India Peaceful Atomic Energy Cooperation Act, Bush indicated that he did not agree with provisions like Section 103 and Section 104(d)(2) in the legislation. Although, many of the Indian reservations have been addressed by the US, but there are certain grey areas in the deal which may not draw attention in the text form but can be critical in the operating processes in future. None the less, India seems confident on the terms of the deal being in its favour as Indian ambassador to US, Mr, Ronen Sen said, "No agreement on any issue can be long lasting unless it's perceived to be of mutual benefit. As democracies we have to take the deal in and through our own democratic processes."[10]

**Impact of the Deal on Indian Nuclear Weapons Programme**

Indian nuclear weapons programme has been constricted due to supply of uranium. It is estimated that, without the nuclear deal, their stockpile would have exhausted by 2007. India has also not been able to import uranium for its un-safeguarded nuclear reactors due to restrictions imposed by NSG. Indian power reactors at 75 percent capacity require about 400 tons of uranium per year. The plutonium production reactors, CIRUS and Dhruva, which are earmarked for nuclear weapons, consume perhaps another 30-35 tons of uranium annually. It is estimated that current uranium production within India is less than 300 tons a year, which is well short of current and envisaged requirements.[11]

US-India nuclear deal has promised India an access to the international uranium market. This will free up its domestic uranium for its nuclear weapons programme and other military uses and would allow a significant and rapid expansion in India's nuclear arsenal. India is believed to have a stockpile of perhaps 40-50 nuclear weapons, with fissile materials stocks for as many more. India plans an arsenal of 300-400 weapons within a decade.[12]

In his article '*Atoms for War? US-Indian Civilian Nuclear Cooperation and India's Nuclear Arsenal'* Ashley J. Tellis, an

Indian born Senior Associate at the Carnegie Endowment for International Peace does not concede to the idea that Indian nuclear programme is constrained by domestic uranium shortage. He argues that India possess reserves of 78,000 metric tons of uranium (MTU) and the total inventory of natural uranium required to sustain all the reactors associated with the current power programme (both those operational and those under construction) and the weapons programme over the entire notional lifetime of these plants runs into some 14,640-14,790 MTU—or, in other words, requirements that are well within India's reasonably assured uranium reserves.[13] However, he has endeavoured to measure the entire ore uranium reserves over entire notional life of power and research reactors. India does face a current shortage of natural uranium caused by constrictions in its mining and milling capacity.

**Indian Vertical Non-Proliferation Commitments**

**Moratorium on Production of Fissile Material and Weapon Testing**. The US policy enunciated in J. Hyde Act 2006 towards South Asia is 'to achieve at an earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China.'[14] Joint statement of March 2, 2006 cites India voluntarily putting a moratorium on the production of fissile material for nuclear explosive purposes. US law seeks to look forward for such moratorium at unfixed early date and makes it conditional with China and Pakistan and does not make it a precondition for India with regard to this deal. India's agreement to continue its voluntary moratorium on testing is less binding than a signature on an international treaty like CTBT. Indians could exploit the loopholes in the deal as they insist that agreement is regarding the energy and not arms control.

**India's Stance on FMCT**. In the deal, India pledged to work with the US for the conclusion of a multilateral FMCT. India has been supporting the negotiation of such a treaty for some time, thus it is not a new undertaking. Moreover, it is not clear how meaningful this action will really be because the US itself has thrown the prospects for concluding this treaty into some confusion

by asserting that an FMCT cannot be adequately verified. Indian policy makers view that it may be US policy, there is nothing in any agreement India has signed that commits it to cap or reduce its weapon grade fissile material stockpiles. More so, much will depend on how the negotiations for the proposed FMCT proceed at the Conference on Disarmament in Geneva.

**US Non Proliferation Policy**

The US Administration considers civil nuclear cooperation with India as a *win* for non proliferation efforts as it has brought India into the non proliferation mainstream. The argument notwithstanding, the US-India nuclear deal is a big departure of US from its long standing policy of non proliferation and a big blow to non proliferation regime. By signing the joint declaration, the Bush Administration has weakened the basic and long held non proliferation principle that a legal commitment to forswear nuclear weapons should be a pre-condition for countries seeking assistance in building civilian nuclear reactors.

The US-India nuclear deal implicitly endorses, if not indirectly assists, the further growth of India's nuclear arsenals. The plan's gaping loopholes would allow India to increase its current capacity to produce 6-10 additional nuclear bombs every year to several dozens per year.

**Impact on NPT**

The Indians have long claimed that the NPT unfairly grandfathered China into the nuclear club while keeping India itself out on the grounds that it had not tested a weapon when the treaty was completed. Bush Administration accepted this logic. That was why, rather than insisting that India join the NPT as NNWS, US has for much of the past seven years, tried to work out a genuine compromise with India.[15] The Bush Administration in this deal granted India the privileges of an NPT defined NWS. .India has been treated selectively by the US in this deal which undermines the rules of NPT. Furthermore, once the door has been opened to

exceptionalism, it will be all the more difficult to rein in imprudent exports by other members of the group.

US-India nuclear deal also has undermined NPT by devaluing the commitments made by non nuclear weapon states (NNWS) in order to receive peaceful nuclear technology assistance. First, the NNWS under the NPT cannot make nuclear weapons while India can make the weapons. Second, all of the NNWS under the NPT must accept safeguards on all of the nuclear materials and facilities. Under the US-India agreement, India needs to only accept safeguards on its designated peaceful nuclear facilities.[16]Deal has also demolished the norm of full-scope safeguards as a criterion for exporting nuclear materials, equipment and technology to non-signers of the NPT. The apparent double standard that allows India to escape full-scope safeguards and still obtain nuclear assistance while countries like Japan, Germany, and Brazil are held to a tougher standard is a prescription for trouble. Countries may not leave the NPT over this issue, although one can not be absolutely sure of that. But the commitments of countries to the treaty will surely be weakened and may show up in lower support for tough measures of enforcement for violators or nuclear norms.

**Implications for Pakistan's Security**

As the deal has reached its final shape, a 40 year agreement which can be further extended by 10 years, its implications on the security environment can not be ignored. It has affected international as well as regional security environment because of a nuclear neighbour in South Asia with whom Indian relations have followed a non- cooperative pattern. Moreover, approval of the deal by the NSG, involves concerns of the international community.

US- India nuclear deal is a segment of their larger strategic partnership. The deal has long term strategic implications for the region as whole and for Pakistan in particular. It seeks to strengthen India which could further impose hegemony in South Asia. From Pakistani perspective, US-Indian partnership could disturb Pakistan's strategic relationship with India which would, in turn, impact on Pakistan's role of a balancer in South Asia. Any further

increase in the strategic gap in conventional forces between India and Pakistan, therefore, would disturb the balance of power in India's favour.[17]

Indians have been successful to convince the US that the issues facing both the states are the same and India is the only country in South Asia which is a champion of democracy and that the countries in its periphery could all fail as states. India and the US should join hands in order to fight this before it engulfs civilised states like India and US. At a deeper level, it signifies that the US is willing to give an increasing role to India in the smaller South Asian countries internal affairs. The idea strongly contrasts with Pakistan's vital security interest which was to dilute Indian hegemony in the region.

The common ground identified for granting this deal to India is its democracy. On this very account Pakistan, in the US perception dose not qualify for such a deal. The consequences of the deal also enable India, to make qualitative and quantitative improvements in its nuclear arsenal and accentuate the imbalance in the region, thus would impact Pakistan's nuclear deterrence. The cooperation in space and sale of sensitive technologies to India would further weaken Pakistan's nuclear as well as conventional deterrence and Pakistan may be pushed into arms race. Sale of Ballistic Missile Defence as envisaged in Indo-US defence deal would force Pakistan to re-evaluate its credible minimum nuclear deterrence.

By recognition of India's civil nuclear energy requirements as legitimate, and acceptance of a separation between the civil and the military programmes, India which is a non-signatory to NPT, has implicitly been recognized as a *NWS* by US and, in due course will be accepted as such by the 45 NSG countries as well. It has left Pakistan out in the cold. Pakistan's weapons programme will remain suspected. As such, may be subjected to non proliferation interdiction measures like PSI, denial of dual use items, stringent end user certification requirements, sanctions on its various entities, etc. India joining PSI as envisaged by J. Hyde Bill will get the right to interdict Pakistani shipping.

US acceptance of India as a NWS gives weight to the notion that nuclear weapons enhance a country's status and power, an idea historically deep seated in Indian strategic thought and manifested in her nuclear weapon programme. It also means that the US accepts the notion that some states are entitled to have nuclear weapons, but is not willing to accept others. India by this deal has broken out of post 1998 sanctions and will enter a new cooperative and liberalized sanctions free regime, ostensibly for its civil programme but with convenient dual use applications. Its proliferation record notwithstanding, India has been recognised as a responsible state with regards to nuclear non proliferation, while A.Q. Khan legacy will continue to stigmatize Pakistan and use against it from time to time. On same very account, Pakistan has been denied similar deal.

**Policy Options for Pakistan**

Pakistan's strategic options in response to challenges emerging out of Indo-US strategic partnership and nuclear deal are not as bleak as they appear to be. In view of the emerging environment, Pakistan needs to adjust its security driven foreign policy in a realistic manner.

Following are some policy options for Pakistan to match the threats emanating from US-India nuclear deal:

- **Option 1: Go Alone.** Instead of asking for a nuclear deal of the same kind from any other state, Pakistan can opt to go alone and manage the situation itself in two ways. First, Pakistan follows restraint and adheres to its policy of minimum credible deterrence. Second, Pakistan can opt to increase its weapons potential, moves from minimum deterrence to sufficient deterrence. However, by doing so Pakistan's economy would have to bear the costs.
- **Option 2: A Package Approach from US.** Pakistan should continue to demand a package approach from US and demand from the US to treat both India and Pakistan without discrimination. If Pakistan is successful in attaining a similar kind of deal from the

US, balance of power that has shifted in favour of India would be restored. However, all this is contingent upon US agreement on similar deal for Pakistan which seems improbable at the moment.

- **Option 3: Looking up to China.** China and Pakistan have proved to be reliable and steadfast strategic partners. Nuclear cooperation is an important area under consideration in the strategic dialogue between the two countries. US- India deal has set precedence; Pakistan could seek similar nuclear cooperation from China.
- **Recommended Option.** Looking at the current scenario, it's not difficult to discern that US may not offer a similar deal to Pakistan. Acquiring a similar deal from Russia would also be equally difficult. Pakistan should exhibit strategic restraint rather than entering into an arms race with India. Hence the two best options for Pakistan are that it *should adjust its nuclear posture and fulfil the requirements of minimum credible deterrence with assured second strike capability; simultaneously it should manoeuvre and get China on its side and enhance nuclear cooperation with her.*

## Conclusion

Indo –US nuclear deal on one plane has undermined the NPT regime while on other the assurance of uninterrupted and open-ended supply of nuclear materials, highly advanced weapons and technology to India through strategic partnership has destabilized the region. Provision of anti-missile system to India would further disturb the precarious strategic balance of in South Asia. Pakistan's legitimacy for nuclear energy must be argued with the US and NSG forum. Being an ally of US in the GWOT, Pakistan should continue to raise its concerns to US on differential treatment given to India in the name of 'individual relationships' and also keep asking for similar deal. At the same time should seek Chinese assistance for nuclear energy. On the strategic plane Pakistan should follow a "Policy of Restraint" and avoid arms race.

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## Notes

[1] Joint Statement - President George W. Bush and Prime Minister Manmohan Singh, July 18, 2005
http://www.armscontrol.org/country/india/20050718_Joint_Statement_India.asp?print.

[2] ibid.

[3] The US provided four shipments of heavy water with each shipment constituting 18.9 tons of heavy water, see 'India: Nuclear Imports/Exports', Nuclear Threat Initiative (NTI): Country Overviews, at
http://www.nti.org/e_research/profiles/India/Nuclear/2860.html

[4] 'India's Nuclear Weapons Programme, The Beginning: 1944-1960', *The Nuclear Weapons Archive*,
http://nuclearweaponarchive.org/India/IndiaOrigin.html

[5] On May 18, 1974 India tested a device with a claimed yield of 12 kilotons at Pokhran in Rajasthan, and called this test a "peaceful nuclear explosion." As an immediate reaction Canada suspends nuclear cooperation. The US allowed continued supply of nuclear fuel, but later cuts it off.
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[13] Ashley J. Tellis, "Atom for War? US-Indian Civilian Cooperation and India's Nuclear Arsenal", Carnegie Endowment for International Peace.
[14] J.Hyde Act 2006.
[15] William C. Potter, "India and the New Look of US Non-Proliferation Policy", *Non Proliferation Review*, Vol. 12, No. 2, July 2005.
[16] In the separation plan Indians have not agreed to place safeguards on their breeder program, including their breeder R&D program and the reactors needed to produce plutonium for the breeder. It means a large-scale future increase in India's weapon production capacity. This is in contrast to NPT parties with breeder programs like Japan whose programs are completely covered by IAEA safeguards.
[17] Inayat Mavara "US-India Strategic Partnership: Implications for Asia and Beyond", *Regional Studies* Vol. xxiv, No. 2, Spring 2006, Institute of Regional Studies, Islamabad.