This essay intends to examine the implications of the Cooperation on the Peaceful Uses of Nuclear Energy with India, signed between India and the United States, also known as the 123 Agreement on other member and non-member states to the NPT. With this aim, following a brief history of India’s nuclear developments, the implications of the cooperation to the two signatory parties will be defined. Later, the agreement shall be reviewed in terms of the Nuclear Non-Proliferation Treaty articles and an assessment of the agreements implications to this treaty shall be examined. Finally the findings will be analysed in terms of the agreements implications for world order and peace by consider its implications on both the signatories as well as for the non-signatories to the Nuclear Non-Proliferation Treaty.

India, having not ratified to the Nuclear Non-Proliferation Treaty (NPT), is thus not legally bound to the articles of the treaty. Its nuclear test of 1974 and its refusal to join the NPT illustrated to the world its unwillingness to give-up its nuclear weapons. For this reason, the exchange of nuclear technologies, even for peaceful purposes, could be used for the production of nuclear weapons\(^1\). This is perceived as a threat to international security and peace by many countries and resulted in the need for further precautions towards illegal producers of nuclear weapons, to be taken to preserve the peace and world order. One of these precautions was by the United States (US) banning nuclear exportation to India. Despite these restrictions and precautions, India tested five more nuclear weapon in 1998\(^2\). Singh Jaswant, the Senior Adviser on Defence and Foreign Affairs to the then Indian Prime Minister published an article arguing that India had the sovereign right to possess nuclear weapons as a means for the national interests of the country, just as the other five Nuclear Weapon States under the NPT have the right to\(^3\). The article was, until recently, available on the website of the Indian Embassy, which, according to Kesav Murthy Wable could be “construed as a diplomatic act that constitutes practice indicating its unilateral legal stance on nuclear weapons”\(^4\). In other words, it is an illustration that India is not willing to abandon its nuclear weapons.

Following negotiation between the two parties, in October 2008, the US, with the aim to complete civil nuclear energy cooperation signed on the Cooperating on the Peaceful Uses of Nuclear Energy with India, which is also known as and will hereinafter be referred to as the 123 Agreement. The 123 Agreement has introduced a new perspective to the international non-

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2. ibid.
proliferation scheme, due to the fact that India is one of the countries which have not ratified the NPT and that in this case, having tested its nuclear weapons after the cut-off date of 1 January 1967 as stated in Article IX of the NPT⁵, would be situated as a non-nuclear weapon state if it does ratify.

The signing of the 123 Agreement has lead to many arguments on the compatibility of the agreement with other agreements and treaties that the US has ratified to, particularly that of the Nuclear Non-Proliferation Treaty. With the intention to adjust the domestic laws of the US, which otherwise would not make the application of the 123 Agreement possible, and to initiate the agreement terms with India, the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006⁶, was signed into law by the US government.

The initial intention of the agreement was to establish a nuclear supply flow between US and India. Besides nuclear cooperation, Robert G. Joseph, Under Secretary for Arms Control and International Security stated in a hearing that nuclear power is important for India to facilitate its economic growth and its increasing demand for energy and that the bilateral agreement intends to facilitate this in a safe peaceful manner⁷. It was also stated by Peter Custer in the Monthly Review that the cooperation will also provide the US with an important amount of financial benefit⁸, with the allowance of US companies to be located and allowed to function within Indian borders. This suggests that the bilateral agreement was intended to answer the interests of both states⁹.

The recent behaviour pattern of India indicates that it has been willing to work together with the world to fight the spread of nuclear technologies, particularly during the past years, although it has refused to ratify the NPT and that it had taken the necessary precautions domestically to prevent the use of the imported nuclear technologies for weapon purposes, as well as constructing its export controls by amending its domestic laws¹⁰.

However, from the 123 Agreement text it can be seen that, instead of being punished for its two nuclear tests and not ratifying to the NPT, thus threatening the world peace and order, India has been given the chance to continue its nuclear activity with the technological, material

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and knowledge support of the US. It must be noted that strong and instant restrictions that US could have included in the agreement would be “deal-breakers” and that it would be more beneficial for India to commit to such a basic agreement rather than allowing it to continue acting independently as a nuclear threat\textsuperscript{11}.

Committing India to a legally binding agreement is important in following its nuclear activities. In this remark, Joseph pointes out that the US has never supported India’s nuclear weapon program and that it believed that with the unique situation of India and its commitment towards non-proliferation, the 123 Agreement would be an important step towards reaching the goals set by the NPT, arguing that “tailored approaches” that take the present conditions of specific countries into account would be a more effective way of solving contemporary world problems\textsuperscript{12}. However, when the text of the NPT and the safeguard agreements which other states are bound to are examined, it is apparent that the 123 Agreement is greatly in India’s favour with regard to its nuclear activities rather than moving it towards non-proliferation. The restrictions on the civil nuclear functions are minimum while it will gain nuclear assistance for its civil nuclear installations from the US\textsuperscript{13}. The present agreement can be argued to lack necessary restrictions to lead the country towards non-proliferation. The Additional Protocol adopted with the International Atomic Energy Agency (IAEA) will have control over the nuclear activities of the civil nuclear facilities but leaving the military facilities uninspected. In order for the cooperation to function as a tool for the NPT and result in the peaceful use of nuclear energy and non-proliferation, it is important to observe that the nuclear technologies received under the 123 Agreement are only used for civil facilities and not for military purposes. Such a close observation would result in the interference of the state sovereignty and is legally not possible.

Until the 123 Agreement, India was excluded from legal international nuclear commerce. Although this indicates the effectiveness of the NPT, it was not a factor preventing India from further developing its nuclear strength. For this reason, many arguments have been made on the legality of the 123 Agreement and its implications to the world order and security. Critics have pointed out that the cooperation weakens the efforts of keeping countries, particularly Iran and North Korea from developing nuclear weapons and may also lead to a nuclear arms race in Asia\textsuperscript{14}.

\textsuperscript{11} Joseph, Robert G.: Hearing on U.S.-India Civil Nuclear Cooperation Initiative, \textit{op.cit.}
\textsuperscript{12} \textit{Ibid.}.
\textsuperscript{13} The Treaty on the Non-Proliferation of Nuclear Weapons, (text of the treaty”), \textit{op.cit.}
Article I of the NPT states that nuclear weapon states should not, in any way assist any non-nuclear weapon state to manufacture or acquire nuclear weapons. According to Article IX of the treaty, a “non-nuclear weapon state” is a state which has not manufactured and exploded a nuclear weapon before 1 January 1967. In this respect, although not a party, India is considered to be a non-nuclear weapon state by the NPT. Therefore, the 123 Agreement can prove to be a breach of Article I of the NPT. Since the main objective of the NPT is to eliminate nuclear weapons and to provide that nuclear energy is only used for peaceful purposes, it would be important for Article I to clearly ban the assistance of nuclear weapon production for non-member states to the NPT. It is evident that India possesses nuclear weapons and it is not possible with the 123 Agreement to control the military facilities of India. Therefore, it can not be guaranteed that the nuclear assistance from the US is not used for military and nuclear weapon purposes. In a case where India does use the 123 Agreement for its nuclear proliferation, the US would also be breaching Article VII of the NPT which states that the state parties to the treaty can conclude regional treaties to assure the elimination of nuclear weapons in their country. Particularly India’s supports in states having the right to develop nuclear energy, acknowledges the NPT and non-proliferation policies as discriminatory and has stated its clear refusal to ratify the NPT, indicate that it is not ready to abandon its nuclear weapons.

The NPT, under Article V, allows for the availability of any benefit of nuclear powers for the non-nuclear weapon states by the nuclear weapon states in a case of need. This article presents strong grounds for countries to ratify to the NPT as non-nuclear weapon states, since their security are assured. The intention of India refusing to ratify to a treaty where it shall be required to renounce its nuclear weapons but in return gain the full support and security of the nuclear weapon states can only be perceived as an intention of threat to world peace rather than cooperative incentives.

The threat posed by the inability to limit India’s fissile material production will become increasingly apparent in the future, particularly since the NPT intends to eliminate the production of nuclear weapons and that today, the nuclear weapon countries under the treaty

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15 The Treaty on the Non-Proliferation of Nuclear Weapons, (text of the treaty)” op.cit
16 The Treaty on the Non-Proliferation of Nuclear Weapons, (text of the treaty)” op.cit
17 Ibid.
18 Ibid.
19 Ibid.
21 The Treaty on the Non-Proliferation of Nuclear Weapons, (text of the treaty)” op.cit
are moving towards limitations on their fissile productions. This is perceived as a threat because of the fact that India possesses nuclear weapons, is obtaining nuclear technological and information support from the US and is not a party to the NPT. This case makes it a challenge for other states to stop their fissile material productions since they do not know the true intentions of India. It is also argued that the 123 Agreement, instead of encouraging India towards nuclear non-proliferation, particularly with the assistance it is receiving under the 123 Agreement from the US, India would continue to be a global nuclear threat and continue having no intention to join the NPT. India’s unwillingness to abandon its nuclear weapons was also illustrated before the signature of the 123 Agreement by the repeated requests of India to be recognised as an official nuclear weapon state.

During the NPT Review and Extension Conferences of 1995 and 2000, the NPT member states affirmed the decision that non-NPT parties should not be entitled to the same assistance that NPT party states have. The US, however, has taken contrary action to this decision with the 123 Agreement.

A partnership between any country and the US can be perceived as a threat by other countries due to the position of the US in global politics as a great power, particularly if this is a nuclear cooperation agreement especially if it causes uncertainty of the future intentions of the partnership. The same level of threat is valid for the member states to the NPT as well as the non-members, particularly Pakistan, which has a competing nuclear history with its neighbour India. With the security concern on the 123 Agreement, Pakistan would feel the need to continue with its proliferation measures, resulting in a further increase in regional tension. If Pakistan does develop its nuclear weapons with the intention to increase its deterrence level, this would mean that the US would be violating the NPT. The security concern is also an issue for the international order in general. As long as the agreement between India and US exists, the NPT will lose its strength over the non-proliferation of the world and countries. Particularly those that are not a party to the NPT will be too concerned about the nuclear threat posed by a non-NPT member but which legally exchanges nuclear technologies with a nuclear weapon state member to the NPT.

Although, as stressed by Condoleezza Rice, United States Secretary of State, that the US does not have the intention to legitimise India’s nuclear weapons program, the Under Secretary

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24 ibid.
25 ibid.
26 ibid.
28 ibid.
of Defence for Acquisition, Technology and Logistics Dr. Ashton Carter pointed out, that the 123 Agreement had given India a de-facto recognition as a nuclear weapon state\textsuperscript{29}. On the other hand the IAEA Director General El Baradei put forward that the perception of the 123 Agreement was “neutral” because it did not mention the legal nuclear status India\textsuperscript{30}.

The USA government agrees with the 123 Agreement to sell India material and equipment facilitating the enrichment of uranium and the reprocessing of plutonium, as well as the fuel for its nuclear reactors. These, in theory, are the materials needed to create a nuclear bomb\textsuperscript{31} and no legal structure is preventing India from developing its military nuclear facilities and structuring a nuclear weapon.

The agreement is based on five points\textsuperscript{32}. The first of these is that India accepts that inspectors from the International Atomic Energy Association (IAEA) to inspect its nuclear programme and that all of its future thermal and breeder reactors will be permanently controlled by IAEA safeguards. Further to this, India agrees to sign the Additional Protocol, allowing further power to the IAEA for inspecting its civilian facilities. In addition to this, India accepts to agree on a Fissile Material Cut-off Treaty (FMCT) with the US to stop fissile material production, to continue the test ban of nuclear weapons and to prevent the nuclear technologies from reaching states which have proved to be against the international non-proliferation act. Finally, the agreement provides for the use of the Indian land by US companies for the construction of nuclear reactors\textsuperscript{33}.

The arguments in favour of the 123 Agreement, in general, point put the strategic bond between the two countries against international threats. Experts state that the agreement forms the basis of merging India back to the regional politics with its responsibilities as a nuclear power, aiming to develop reliable and lasting cooperation\textsuperscript{34}. It can also be argued that the 123 Agreement produces an acceptable binding regulation to control over India’s nuclear developments and intentions, which it has accepted and thus must comply to. This is an important step, particularly since India has refused to ratify the NPT and had preferred to act as it wished in the nuclear field. With the agreement being signed, India is now under observation and must now proceed with its nuclear development and activities under the control of the international law, making India a safer player in the international era. The Director-General Mohammed El Baradei refers to the agreement between India and USA as a “pragmatic way to

\textsuperscript{29} Kerr, Paul K. “US Nuclear Cooperation with India: Issues for Congress” \textit{op.cit.}
\textsuperscript{31} Bajoria, Jayshree and Pan, Esther, “The U.S.-India Nuclear Deal, Council on Foreign Relations” \textit{op.cit.}
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid
\textsuperscript{34} Ibid.
bring India into the non-proliferation community." In theory and on paper, the 123 Agreement, if complied to, will not only benefit the two signatory countries but also the international era making, at least the region of India a safer environment in political terms. However, in practice, the agreement only covering the safeguard of the nuclear material and facilities India produces after it was signed while excluding the previous productions, limiting them further to the civil nuclear facilities and having no enforcement over its military facilities will pose a threat to the international world order.

From the research of this essay, it can be seen that, in theory and on paper the 123 Agreement poses an importance in keeping a growing nuclear power under close observation and in one way or another, binding it to the safeguard regulations of the IAEA. Also, it carries immense economic advantages for both countries. However, in practice, it could lead to further regional and international problems both for the future prospects of the NPT and for the sustainment of world peace and order. Firstly, there are clear incompatibilities between some of the NPT articles and the 123 Agreement. A second point is that the 123 Agreement poses an encouragement for other non-NPT member states to continue their nuclear developments and continue to refuse ratification to the NPT. It is a further encouragement for such states to negotiate with NPT member nuclear weapon states for a similar cooperation. As in the example of India, this proves to be more achievable then it was when the NPT was first introduced, due to the increasing importance of nuclear energy and the economic benefits it presents.

Unless further precautions are taken towards further restricting India’s fissile production and its developments of nuclear weapons, the cooperation agreement will continue to breach the NPT and lead to problems in the global non-proliferation act, leading to the equipment of an increasing number of states with nuclear material. The agreement poses a great security threat, not only for the NPT but for the global structure of relations. In time, with an increasing manner, India’s nuclear cooperation with a great power actor in international relations will be perceived as a threat. This will lead to the increase of the need for security by other states, both signatory and non-signatory to the NPT, which will result in them refusing to give-up their concession for their sovereignty, possibly encouraging them to develop nuclear weapons, thus further threatening the world order and peace.

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