The concluded Indo-US 123 Civil Nuclear Agreement for peaceful purposes was a direct consequence of the US tacit recognition to India as a nuclear weapon state, by justifying India’s strong non-proliferation record. Apart from this both the countries are having many agendas on strategic and economic motives behind the agreement. The deal faced stern criticism in both the countries. The US administration faced severe criticism for making India exception from the NPT, a precedent which will be taken by several other countries to have a similar deal. On the Indian side, despite the want for energy security, it was criticized on the counts of surrendering of its sovereign security on the right to nuclear test, impact on its strategic weapons programme etc. In an isolated manner the deal seems to be perfect for both the countries to come close together, nevertheless on a holistic approach the deal would cause wider ramifications in the world order bringing in disruption on the non-proliferation, balance of power, arms race etc. This paper attempts to analyze the above implications of the deal in a wide spectrum.

Introduction:

The Indo-US civil nuclear agreement was by nature a complex agreement. It involved many intricate formalities and hurdles for its operations and its implications were wide ranging. Initially three basic hurdles are to be passed to secure this deal because of India’s uniqueness of being outside the club of Non-Proliferation Treaty. The First one, India had to negotiate an India Specific Safeguard agreement with IAEA. The second to get clearance from the

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* Reader, Post Graduate Department of International Law, The Tamil Nadu Dr.Ambedkar Law University, Chennai, India. This research paper was presented at the 2nd International Work Shop at the School of Law, Reading University, UK, conducted by the University of Reading in association with the Tamil Nadu Dr.Ambedkar Law University, Chennai under United Kingdom–South Asian Project funded by the British Academy.


2. The IAEA was established as an autonomous organization on 29 July 1957. Though established independently of the United Nations through its own international treaty, the IAEA Statute, the IAEA reports to both the UN General Assembly and Security Council. Since inception, IAEA has been involved in improving the international nuclear legal regime as part of its general aim to improve nuclear safety world-wide and ensure the peaceful use of nuclear energy. The international agreements developed under
NSG\textsuperscript{3} and the third the US congress has to pass the 123 Agreement in compiling IAEA and NSG guidelines\textsuperscript{4}. This made the deal vulnerable to the critics from the both the countries inviting diverse interpretations. On the Indian side the deal seems to be done in haste by creating confusion in its objectives and concealment of the vulnerability on its sovereign security.\textsuperscript{5} On the US part it enacted the Hyde Act to strike a deal with India. The deal is not devoid of merits as there was a mounting pressure from both the countries. In isolation the deal seems to be perfect but, on the whole in creates ripples in the world order which requires a cautious analysis. This research paper makes an attempt to analyse the above topic by understanding the concepts of Disarmament, Non-Proliferation Treaty (NPT), International Terrorism, foreign relations of the United States and India and International Atomic Energy Agency’s (IAEA) safeguards on nuclear programmes and of course an in-depth analysis of the Hyde Act and 123 Civil Nuclear Agreement.

For the purpose of brevity and clarity the issues of the above topic were broadly classified in to three parts. Part I is primarily concerned about the impact of the 123 agreement on the world non-proliferation regime which was controlled through NPT, Nuclear Disarmament, Peaceful use of Nuclear technology, IAEA safeguards and NSG their issues and significance in the current nuclear era. Part II deals with the historic political and diplomatic relationship existed between India and US that lead to the roller-coaster relationship of both the countries. Finally, Part III focuses the practical analysis of

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\textsuperscript{3} Founded in the year 1974, Nuclear Suppliers Group (NSG) is a multinational body concerned with reducing nuclear proliferation by controlling the export and re-transfer of materials that may be applicable to nuclear weapon development and by improving safeguards and protection on existing materials.

\textsuperscript{4} Section 123 of the Atomic Act of 1954 and the Section 128 of the Nuclear Non-Proliferation Act (NNPA), 1958, laid out a requirement for full scope safeguard s in order that the United States could proceed with significant nuclear exports to an non–nuclear weapons state.

\textsuperscript{5} Chari P.R., Indo-US Deal, Margin, Vol.37, No.4, July – September 2005, p.28.
the consequences of the 123 agreement from the stand point of India and US along with the closer look on Hyde act of US and Nuclear Civil Liability bill of India. Further the deal’s likely impact on the disruption of the world non-proliferation regime, balance of power and triggering up of the arms race. Also important to know, how the deal subtly violates the IAEA and NSG guidelines. Finally, to understand, how far the nuclear deal would decide the future of India – United States relationship.

Part- I

Impact of the 123 agreement on the world non-proliferation regime:

The Nations across the world gathered to stop the untoward incidents of nuclear war wanted to create a non-proliferation regime. A glimpse at the history of the strengthening of the non-proliferation regime seems to be interesting as India seems to be one among the factor for the same. The fertile global conditions for the nuclear weapons proliferation were set probably in 1953, when US President Eisenhower introduced his “Atoms for Peace” plan whereby the US would share the benefits of the peaceful atom with the rest of the world. By the mid of 1960 a relatively stable arms situation had developed between the US and erstwhile USSR. It was threatened by two major forces. One is the escalation of weapons in the form of Anti-Ballistic Missiles (ABM) and the second one were the spread of nuclear weapons to additional countries. In 1968 when the proliferation was crucial the Non-Proliferation Treaty (NPT) was introduced. The NPT had three main pillars, nonproliferation, disarmament, and the right to peacefully use nuclear energy. However the NPT was not devoid of merits. The treaty created discrimination on ‘nuclear have’ and ‘have-nots’ to basically

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6 “Atoms for Peace” was the title of a speech delivered by U.S. President Dwight D. Eisenhower to the UN General Assembly in New York City on December 8, 1953.
protect the big five powers. The big five was interested in going for ‘Vertical Nuclear Disarmament’ rather than ‘Horizontal Nuclear Disarmament’. This reasoned for India, which was having a good track record of non-proliferation, not to sign the NPT and preferred to remain outside the treaty. When the NPT (Doc. 141) was submitted to U.N. General Assembly, it was approved on June 12, 1968 by a vote of 95 to 4, with 21 abstentions. Representatives of a number of non-nuclear nations expressed their misgivings about their treaty centering on the feeling that is placed a permanent nuclear oligopoly in the hands of US, USSR and UK leaving other nations without guarantees. There was also strong criticism from the non-nuclear countries to the effect that the treaty would make them permanently second class nation and subject them to restrictions in the peaceful use of nuclear energy that did not apply to the nuclear weapons state.

**Indian Nuclear Test**

In a strategic move, India conducted her first atomic test in 1974 alleged to have used Plutonium obtained form US heavy water used at Indian Cirrus reactor. As the result of which, Nuclear Suppliers Group was created in 1975 as multi dimensional body aim to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons, by controlling export and re-transfer of materials that may be used for the nuclear weapon development and by improving safeguards and protection on the existing materials. Additionally, to gain supply from the NSG members, countries who are under NPT must submit all their facilities to the IAEA inspections which was created in 1957. Further, the US on objection to the India nuclear test in 1974 passed Nuclear Non-Proliferation Act (NNPA) by the US Congress in 1978.

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11 Trevor N.Dupuy and Gay M.Hammerman (eds.), note 8, pp. 558-560
against to withhold nuclear facilities to India and other countries which do not adhere to the IAEA safeguards.\textsuperscript{13}

\textbf{Implications}

The above framework working hard for the non-proliferation regime, it is understood that the deal in the current form clearly overrides the above international non-proliferation framework, over and above the NPT even above the India’s concern for non-proliferation.

But opening up the valve for foreign nuclear fuel to India, the deal would free up India’s limited domestic reserve fuel of Uranium for weapons programme creating arms race in the near future.\textsuperscript{14} Under the IAEA safeguards, it was believed that all the Indian nuclear reactors were to come under the safeguards of the IAEA, but under the separation plan presented by India separating its civil and military reactors, does not place a number of reactors under the safeguards and thereby failed in two counts. One being, that the US claim to bring India in to non-proliferation regime was belied and the other one is the separation plan placing few nuclear reactors under inspections which is against the NSG principles which requires a blanket inspections criterion on all nuclear trade.

The deal also have a far reaching implications on the others states as well. It gives out a wrong signal and encourages other states to acquire nuclear weapons. It also encourages other nuclear states to trade with non-nuclear weapon state, creating a vertical and horizontal proliferation which would trigger arms race in Asia region, where already tension were prevalent among India, China and Pakistan and this eventually lead to destabilize the world order.

The Indo-US deal took off with a view that India is a responsible nuclear state. India opposition for the NPT is not pertaining to non-proliferation but for the distinction of ‘haves’ and ‘have-nots’. But the Indo-US deal makes a clear

\textsuperscript{14} Supra fn.4 p.159.
distinction between ‘responsible’ and ‘irresponsible’ behavior on non-proliferation. By agreeing to this distinction India becomes party to the discriminatory deal.  

While Pakistan has been denied the similar deal for its proliferation record, in future, many member nations of NPT might demand the same treatment after they exit the treaty in pursuit of nuclear weapons through the friendly ties with the US.

The deal infact completely disregards Article VI of the NPT that states the obligation of the members to move towards nuclear disarmament.

Part –II

Indo-US Relationship

The relationship between India and United States cannot sustain because of their changing political policy perceptions. However, there were strong trade ties existing between the two countries. It is interesting to note that in 1963 the United States had provided financial assistance to India for setting up an Atomic Power Plant at Tharapur and assured the supply of uranium fuel. Subsequently the United States has denied the same to India when India conducted the first Atom Test in 1974. Where the US claimed that India had violated the peaceful nuclear uses clause by allegedly using American heavy water in Canadian Cirus reactor from where India obtained the plutonium for the 1974 blast. This prompted US to pass Nuclear Non-proliferation Act (NNPA).

India in order to counter Pakistan and its supporter China had entered Indo-Soviet Treaty of Peace and Friendship in August 1971. This move was not appreciated by the US where it had sent its nuclear powered carrier, USS Enterprise into the Bay of Bengal in show of the gunboat diplomacy against

15 Ibid p.167
India.\textsuperscript{17} India while striving for non-proliferation, but showed her protest against NPT in its present form, not signing the NPT and subsequently CTBT eventually going against the policy of US.

The second atomic test conducted by India and Pakistan in 1998, evoked sharp reactions worldwide especially from US which influenced western economic sanctions against both the countries. However, following the US war in Afghanistan in 2001 changed the entire scenario. Almost all the economic sanctions imposed after the 1998 tests were lifted.\textsuperscript{18} A significant change of the political stand-off between India and United States has tremendously changed recently due to factors like the increasing growing global terrorism and 9/11 attack. India and US joined their hands in combating transnational terrorism which was a menace for the mankind. The principal achievement of the current deal is that it had stopped the Nuclear Apartheid which was a long dream of India. The India’s free trade policy, its economic potential destination and India’s commitment towards nuclear doctrine of ‘no first use’ of nuclear weapons etc also make the two nations closer at this point of time.

\textbf{Part - III}

\textbf{Strategic Move}

There are several factors for the move by the United States and India coming closer in signing the 123 agreement. It is understood that the move was made by US and not India. To know who initiated the deal makes to understand the deal in the better perspective. The US tried several attempts to make India to yield to its non-proliferation policy, NPT and NSG, in 2005 US was preparing to sell F16 to Pakistan, US oppose the Iran-Pakistan-India oil pipeline.


Failed in above attempts, and in order to bring India under the realm of NPT and to realize the same, US opted for a diplomatic step to bring India closer to its arms. US called India as its ‘Next Step and Strategic Partnership’. If India considers the Nuclear energy as critical for its economic development on the condition of signing of NPT and CTBT\textsuperscript{19} – Then India has a choice between a viable nuclear energy Programme and a credible nuclear weapons deterrent. India’s objective was to meet out its burgeoning energy needs without compromising its attitude towards the NPT and CTBT and also to safeguard its sovereignty and security from the possible external threats.

On the part of United States is concerned, the agreement is taken by economic and strategic means. On strategic issue the US want a strong ally to counter China in the South Asia. Further, there are four major points declared by the former President George W. Bush while signing the Act with respect to the need for the agreement with India. To ease out the pressure on the global oil markets, to improve the economic growth of the United States, to help India to reduce emissions and improve its environment and to stop spreading of the nuclear weapons. Some of these points were not devoid of merits as analyzing the given facts, the nuclear energy requirements of India in 2020 would be marginally go up to 7 percent from the existing 3 percent and in that case India has to rely more upon the alternative energy resources such as Wind/Hydro/Bio/Solar apart from the heavy reliance on fossil fuels.

**The Indo-US 123 Agreement and Global Reaction**

The 123 agreements evoked sharp reactions among the other Nations across the globe particularly with IAEA and NSG because it was entered with a Non-NPT member and the tacit recognition given by United States to India as a nuclear weapon state. Further, the 123 agreement perhaps might trigger the NPT

\textsuperscript{19} The Treaty was adopted by the United Nations General Assembly on 10 September 1996. It opened for signature in New York on 24 September 1996, when it was signed by 71 States, including five of the eight the Nuclear-Capable States. As of May 2010, 153 states have ratified the CTBT and another 29 states have signed but not yet ratified it. India, North Korea and Pakistan have not yet signed it.
members to move out of it and produce more nuclear weapons and on the other hand the new members who would have interested in joining the NPT might also withdraw their attitude. The agreement also violates the UN resolution 1172 which calls Pakistan and India to stop Fissile Material for nuclear Programmes. There is an apprehension that India might use the Uranium which has been supplied by the NSG for its civilian nuclear programmes and save the natural Uranium found in it soil to create more military nuclear Weapons. Some of the nation fears that the agreement leads to the growth of Arms Trade in the South Asia region.

**International Treaty Versus Domestic Law**

A closer look at the Henry J. Hyde United States and India Nuclear Cooperation Promotion Act of 2006, and 123 Agreement and other related issue reveals that the possibility of the unilateral termination of the agreement can be made by the United States in the event of India conducted any nuclear test. The other issues on the report of the reprocessed and spent fuel and prior permission of the US were sternly objected. In this regard, the United States said that it is the internal affairs of the United States and on the part of Indian Government it replied by saying that the Hyde Act is the United States domestic act and it cannot bind India in any way. Further, a clause in the 123 agreement provides that when the disruption of nuclear fuel from United States to India occurs, then the United States and India jointly approach friendly supplier states (Russia, France and United Kingdom) to see the uninterrupted supply of the nuclear fuel to India. It is pertinent to analyse here that, what guarantee being given by the United States that it would not influence the friendly supplier states not to supply nuclear fuel to India. Further to analyse whether the agreement subtly violates the IAEA’s safeguard standards and NSG’s conditions by United States influence.
Conclusion

One of the major factors that affect the relationship between them is the changing Governments and their foreign policy perceptions. The current 123 agreement is one such type. No doubt, it is likely to provide the energy needs of the India to some extent and to pave the way for the India’s futuristic objectives like the UN Secretary General post and the permanent seat at the UN which was once toppled by United States. And the move made by the United States in the 123 agreement with India shall open the doors for the new strategic alliance where United States wants to work together on the issues of anti-terrorism, Peace, Security and economic growth, which would lay the way for the certainty of peace in the globalised world. And all this depends upon the way in which the disputes might arise between the two countries and how the countries could able to solve the issues amicably between them.

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