

## **Indo-US Relations: Indo-US Nuclear Deal and Its Impact**

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### **Abstract**

National security and national interests, in terms of realist premises, are the core value for every nations whether it is big power or small power in international system. Security and defense strategy of the US and India after the Cold War has been significantly outlined the importance of national interests in The "Strategic Partnership" pursued by the US Administration under the President Bush in 2004 was remarkably a turning point in Indo-US relations. Progressively, Obama-Modi relations is also supportive to 2005 Indo-US Nuclear Deal though the US Congress and India opposition groups harshly criticized on the implementation of the Deal under internationally recognized measures and standards. India and Pakistan, the rival regional power in south Asia are, in fact, unilaterally withdrew from Non Nuclear Proliferation (NPT) as signatories after 2010 missile tests. The US together with European Union imposed sanction on both India and Pakistan for nuclear missile tests. Here, it is necessary understand the security and defense priority of both countries is to be observed based on mutual national interests. It also needs to study major factors that force India and the US to continue strategic partnership under the context of Indian Ocean Region (IOR). At least, it hopes to learn lessons from 2005 Indo-US Nuclear Deal negotiation of India and the US in context of civilian purpose nuclear technology in country development.

**Key words:** Foreign policy, security strategy, defense, Indian Ocean Region, Indo-US nuclear deal, 123 agreement, Indo-US relations

### **I. Introduction**

This paper aims to highlight the importance of negotiation on national security of India which is also significant to national development, the civilian nuclear development. The US as a member of NPT tightly hold the guidelines and safeguard mechanism concerning military purpose nuclear plant establishment but stand in permitting civilian purpose nuclear plants in those countries who would like to establish the nuclear energy for electrical and medical purpose. India, the long partner of the former Soviet Union, attempted to upgrade its existing nuclear plants under the safeguard mechanism of IAEA which encountered with the provisions of NPT, 123 Nuclear Agreement, IAEA and its protocols for nearly one decade. Finally, the organizational attempt and skillful diplomats of India overcome the tough stand of US Congress and Indian Congress as well. It also aims to observe the how India attempted to conclude civilian purpose nuclear plant deal even though India worked out from NPT when Indo-Pak rivalry was intense in the late 1990s. The references used in this paper are the Congress Reports written by the Indian experts in the US for the Congressional Research Service, the books written by Indian experts on nuclear technology and Indian Think Tank and references written by third party researchers who are experts on Indo-US and Indo-Pak relations. The method applied to this paper is descriptive method to observe the detailed facts of Indo-US Nuclear Deal. The scientific findings of this papers include the importance of nuclear energy as national interests and national security of every countries including both the US and India in the current situations amidst the importance of human security. Moreover, the diplomatic negotiation skill and domestic political scenes are the determining

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factors to reach to the safeguard mechanism upon which the US Congress stands on strict technical adherence and stand.

## II. Foreign Policy Choices of the US and India

### Foreign policy shift of India and the US

India needs the US and vice versa to project influence in Asia as major global power. India geographically and strategically dominates typically in South Asia. Its rapidly increasing economy, pluralist society, cultural influence in Asia and its huge budget in military security are the major attentions from the world, especially, the US which saw India as a rising partner in Asia during the Clinton and Bush Administration. President Bush saw India as a reliable and important partner in Asia in 2004. In this context, some foreign policy analysts argued that China's rapid rise motivated the attention of the US foreign policy attention to India in the 21<sup>st</sup> Century.<sup>1</sup> India became the US strategic partner especially after inking the ten-year defense framework in 2005 to facilitate bilateral military and security cooperation. The US-India partnership became strengthened due to combined and joint military exercise, bilateral intelligent cooperation and counterterrorism in the late 2000s. After 2005, the US has been the major arm seller to India.

More US interests focused on South Asia when the US wanted to secure its interest and forces in Afghanistan. The US also emphasized the Indo-Pak issue Kashmir region as a cross-border terrorism which is crucial for US forces in Afghanistan. Therefore, the US strongly endorsed and encouraged India and Pakistan on India-Pakistan Peace Initiative.<sup>2</sup> It also expressed its concern on potential conflicts and hostilities between India and Pakistan who possessed nuclear arms and long range missiles. In this context, the US sought to curtail the proliferation of nuclear weapons and missiles in South Asia.

The US-India relations was waned though India's geostrategic, economic and security circumstances. India felt skepticism over US global and regional role after 2008. Bilateral relations had been largely constrained by differences over the US- Pakistan alliance after 9/11 attack. India was apparently reluctant to insert power in its regional context. Subsequently, President Obama envisaged India as special partner of the US. Unfortunately, both had domestic issues like federal budget issues in the US and grand corruption scandal in India. Both had to focus their own domestic challenges between 2008 and 2011. However, New Delhi viewed the engagement with the US as its highest foreign policy priority. The reason was that India needed the US support in its four long term foreign policy objectives - a stable Afghanistan-Pakistan region, exerting influence across the Indian Ocean Region, obtaining status as rule maker in international system and sustaining global power factors<sup>3</sup> such as sustained economic growth and military modernization.<sup>4</sup> Before President Obama, the US administration successively endorsed Japan as an only partner for the UNSC permanent seat.

India's political prominence in South Asia has been matched by a rapid expansion of US-India Strategic Partnership which was an engagement and actually began in the President Clinton administration. Now the US viewed India through the larger prism of Asia. As the

<sup>1</sup> K. Alan Kronstadt & Others: *India: Domestic Issue, Strategic Dynamic and the US Relations, Congressional Research Report (R33529)*, Washington DC, 1 September 2011, No page (Hereafter this work will be referred to as Kronstadt & Others: *India: the US Relations*)

<sup>2</sup> Kronstadt & Others: *India: the US Relations*, p.1

<sup>3</sup> Ibid, p.3

<sup>4</sup> Kronstadt & Others: *India: the US Relations*, p.3

US coped with impact of rising China on Asia, India is increasingly seen as a critical part of America's broader Asia strategy.<sup>5</sup> At the same time, India government has been seeking in partnership with Washington.

It was cleared that international alignment emerged both military alliance and trade partnership which centered on the US. In Asia, China has long been loosely aligned with Pakistan in opposition to India which was aligned with the Soviet Union throughout the Cold War. The US tended to favor the Pakistan side as well. But, both US-India and US-Chinese relations had improved since the Cold War ended.<sup>6</sup> Although India was the world's largest democracy, it faced challenges at home and abroad in the past sixty years. It fought war against China and Pakistan, which possessed nuclear weapons and its two largest neighbors in Asia. After 2008 terrorist attack in Mumbai, India blamed Pakistan as home for Islamic militant groups and Indian hostilities against China had cooled but China remained a major rival in region while maintaining competing claim over territory.

Like India, China increasingly became large economically and militarily as well. China attempted to exert strong leadership in Asia. In 2006, India increased its ties with China and Indian Prime Minister Manmohan Singh personally visited China to open discussion on future trade and military cooperation. In December 2007, the two largest armies in the world, India and China held joint military exercise.<sup>7</sup>

Again, Islamabad involvement in Afghanistan was a major cause for India policy shift to reinforce its cooperation with the US in South Asia conflict. India started to notice the provocative anti-India policy pursued by Pakistan in Afghanistan especially in case of reconciliation between Karzai's government and militant Taliban groups in Afghanistan reconciliation. It was a shadow war between India and Pakistan over Afghanistan while India opened numbers of its consulates in Kabul and along Afghanistan-Pakistan border particularly along the Baluchistan Province in Pakistan. Expulsion of diplomats and staff of consulates between two countries was not new and diplomatic expulsion was a means of retaliation for India and Pakistan which always accused New Delhi's involvement and interference in western border region of Pakistan closed to Afghanistan. Conversely, India claimed that it reiterated its wishes to support Afghan-led reconciliation process without interference or coercion of other.<sup>8</sup> These underlying factors cause India to increase and maintain its effort to scaling back in the hope of easing Pakistani insecurities in Afghanistan. It was a costly for India in its foreign policy shift in Afghanistan. India pledged to provide US \$ 450 million for Afghanistan reconstruction in 2008.<sup>9</sup>

However, Pakistan's primary goal was to prevent India dominant role in Afghan and India was also suspicious about the US encouragement to the Afghan officials to deal with Taliban. Sometimes the US also criticized that high profile of India involvement in Afghanistan which caused difficulties in Afghan efforts on reconciliation with Taliban because India also felt uneasy on US-led Afghan reconciliation and coalition with Taliban in future Afghan government. India did not want Afghan as anti-India Taliban administration so that it reportedly agreed the US military presence in Afghan.

<sup>5</sup> *Asian Views on America's Role in Asia; The Future of the Rebalance*, the Asia Foundation, New York, p. 2 (Hereafter this work will be referred to as *The Asian Views*)

<sup>6</sup> Joshua S Goldstein & Jon C Pevehouse: *International Relations*, 10<sup>th</sup> Edition, London, 2012, p. 70 (Hereafter this work will be referred to as Goldstein & Pevehouse: *International Relations*)

<sup>7</sup> Goldstein & Pevehouse: *International Relations*, p. 72

<sup>8</sup> Kronstadt & Others: *India: the US Relations*, p.20

<sup>9</sup> Kronstadt & Others: *India: the US Relations*, p. 21

China in Asia was another actor to shift foreign policy of the US and India. Rising potential strategic rival between India and China, India influence in Tibet, Beijing's encirclement to Indian Ocean, India's eyeing on vast region from Persian Gulf to South China Sea and the US containment on China in the Pacific and Indian Oceans are the major factor for Indo-US relations in Asia. China support to Pakistani economy and military is also a frustration for India.<sup>10</sup> In this context, democracy boom in India becomes leverage for the US in Asia. Competition in attracting foreign investors, energy supply, market access and relative poverty in India comparing with China are important factors too. However, confident building measures and people-to-people contact are the attempts to ease skepticism in India - China relations as well as US-India relations. For India, the US became a strategic partner in balancing China in Asia and South Asia. For the US, India as the largest democracy became strategic partner in containing China in Indian Ocean access.

### Foreign policy choices of India and the US

In shaping the national interest, foreign policy pursuance and choice are essentially in carrying out the targets of each country's national interests. For India and the US, historically and politically differed in background, but formulated effective foreign policy pursuance through rational means especially after the Cold War.

In fact, India during the Cold War had strong link with the Soviet Union in the context of ideological impact and technical cooperation especially in nuclear and long range missiles as Pakistan has been the close partner of China. However, India has been recognized as the biggest democracy in Asia since 1990s. This fact drew the attention of the US in its close partner in Asia especially the core value of democracy is same in pursuing political development in India. Exception was that India's role in the stability and economic development of South Asia was still limited and its relations with China, Pakistan and Sri Lanka was poorly deteriorated in Asia.

Remarkably, the global power shift had impact on states in Asia after the Cold War, especially, there were many states competing in regional power in Asia. Some scholars said post cold war as China century while others pointed out India as emerging geopolitical and geo-economic continental power with the changing global power in international setting. Moreover, Asia was emerging as dynamic economic power with strong military buildups and importance of two ocean theory on Indo-Pacific was a new security thinking for India and China. While China was articulating "China is rising peacefully", India, the competing power for China and the important partner for the US after the Cold War, launched "Look East" policy to engage and explore more comprehensive and proactive Asia policy. In responding the China's Belt and Road Initiative (BRI), India together with Japan attempted to highlight the importance of three peninsulas, that is, Indo-Pacific peninsula, the West Pacific peninsula and the South Asian peninsula upon which India is an important strategic partner for both the US and Japan.<sup>11</sup>

After the demise of the Cold War, India's geopolitical position in the Indian Ocean and rapid economic development, typically in information technology development brought India to increasingly important player on the global stage<sup>12</sup> which has been strongly backed up by the world's largest democracy and rising economic development. Moreover, India

<sup>10</sup> Ibid, p. 22

<sup>11</sup> Uttam Kumar Sinha (Ed.): *Emerging Strategic Trends in Asia, India, Institute for Defense Studies and Analyses*, 2015, pp. 34-35 (Hereafter this work will be referred to as Sinha: *Emerging Strategic Trends*)

<sup>12</sup> Kronstadt & Others: *India: the US Relations*, p.1

domestic development such as representative government, rule of law and domestic tranquility were the supportive factors in formulating India foreign policy though the then government of India was coalition government under the leadership of Prime Minister Manmohan Singh who led the India Congress Party.<sup>13</sup> India Congress has powerful leverage on foreign policy options considering on national vital interests. The first foreign policy shift of India after the Cold War has been the “Look East Policy” with the aim of extending regional economic cooperation and engaging with geopolitically important partners not only to Asia but also to the western countries. It was true that although India economy was rapidly rising, its infrastructure, market access and foreign investment potentials were in restricted position.

As trade and economic development became crucial for many countries after the Cold War, For India, its traditional concept on Indian influence over Indian Ocean reinforced with new geopolitical thinking on three bays concepts, that is, South China Sea dominated by China, Indian Ocean dominated by India and Arabia Sea by Arabs.<sup>14</sup> Strategically, India and China are competing in wooing the support of Asian countries whereas both India and China have strategic economic interdependence in economic and business development. Clashes in South China Sea and East China Sea linking to the US military presence in the Pacific Ocean and Taiwan Strait extended the opportunity for the strong US involvement in Asian continent.

In this context, the US as a the strategic partner of Asia Pacific countries, established its maritime power with India in Indian Ocean and Arabia Sea both of which are primarily important for the US military and economic interests. President Obama clearly articulated that the US is the Pacific nation and this twenty-first century is the Pacific century when he gave state visit to Japan in 2009 for his first time visit to Asia. It can be seen that rising Asian powers attempted to place foothold as regional power and at the same time, the US prioritized its foreign policy attention on Asia too.

India’s global diplomacy became more pronounced due to end of the Cold War politics and India’s rapid economic growth amid domestic factor was one of the prominent forces in India foreign policy. International attention has been given to India as India is a huge potential market in international trade. Retail sector alone is worth an estimate of US \$ 450 billion in 2000.<sup>15</sup> In fact, India in the early 2000s did not expect to be a major global player and was reluctant and delayed in responding to some major issues such as India’s response to uprising in Middle East, the US-led isolation against Iran and Myanmar, and NATO military action in Libya. India opposed NATO military action against Libya together with Brazil, China, Russia and Germany in voting at the UNSC Resolution 1973.<sup>16</sup> India government was aware of the pressure from human rights activist groups in India which challenged New Delhi government to stand with people or with dictators in Myanmar and Sri Lanka.

For US, its foreign policy continuously strived to dominate the world by using many means since the end of WW II. One of the means was the democratic elections<sup>17</sup> for popular governments in many countries before 9/11 attack. US military operation against Iraq in 2002

<sup>13</sup> Ibid., p. Summary

<sup>14</sup> Sinha: *Emerging Strategic Trends*, p. 33

<sup>15</sup> Kronstadt & Others: *India: the US Relations* p. 11

<sup>16</sup> Ibid., p. 11

<sup>17</sup> William Blum: *America’s Deadliest Export; Democracy, The Truth about US Foreign Policy and Everything Else*, London, Zed Book, 2014, p. 1 (Hereafter this work will be referred to as Blum: *America’s Deadliest Export*)

and 2013 was the US attempt to install democratic government in Iraq based on WMD conspiracy. It was the same US pursuance on many Latin American countries in the 1980s during which many nationalist leaders were overthrown by the US back military operation and economic assistance on the ground of communist conspiracy.<sup>18</sup>

Nuclear technology development became one of the main issues for US foreign policy. When Iran developed peaceful civilian nuclear energy projects, the US insisted the IAEA to investigate and to inquiry Iran nuclear plants even though Russia and China rejected the US attempt in IAEA. On the other hand, India and Pakistan announced their resignation from NPT which was followed by the North Korea later. In this context, the US pressured Iran and North Korea to abandon military purpose nuclear technology development through the UNSC and IAEA. In this background, India became approached to observe the international provisions under international conventions and agreements for its civilian purpose nuclear technology development. In fact, India also needed to upgrade its nuclear plants for energy sufficiency while the US started to showcase India was the one who agreed to commit the international investigation on its domestic nuclear plants with the standards prescribed under IAEA.

Finally, pursuing rationale foreign policy is a major variation in India and the US even though foreign policy establishments of respective country based on foreign services, think-tanks, universities and reliable media access. India's political culture is one of the determinant factors in foreign policy alternative. India's parochial reactive foreign relations together with business style dominated strategic and political concern among Indians.<sup>19</sup> Conversely, the US is strong in pursuing rationale foreign policy for its national interests in Asia and the world.

### **National security strategy of the US and India after 9/11**

National interest of both countries is central in pursuing national security strategy in various approaches. The US National Security Strategy has been based on four national interests - the defense of the homeland, economic prosperity, promotion of US value and a favorable world order for last two decades. Since the end of Cold War, US military presence and US security policy priority on Asia has been significant.<sup>20</sup>

India preferred to maintain triangle relations, that is, India-China- US relations through bilateral trade, foreign investment and innovation in science and technology. For the US, its possession in military, innovative science, power capability and efficient human resources are important backdrops in considering national interests and national security. India always sees the US as its important strategic partner in Asia while China sees the US and India as strategic rivals in minimizing the China's influence in Asia. Also India is no longer viewed the US as threatening as power projection in the Indian Ocean<sup>21</sup> except the US support to Pakistan.

For India, the national security objectives are defending the country's borders as defined by law in line with constitution, protecting lives and property of citizens and of country from traditional and non-traditional security issues, securing the country against the

<sup>18</sup> Blum: *America's Deadliest Export*, p. 17

<sup>19</sup> Kronstadt & Others: *India: the US Relations*, p.1

<sup>20</sup> K. Alan Kronstadt & Sonia Pinto: *India-US Security Relations; Current Engagement, Congressional Research Report (R41823)*, Washington DC, 13 November 2012, p.4 (Hereafter this work will be referred to as Kronstadt & Pinto: *India-US Security CRS*)

<sup>21</sup> Kronstadt & Others: *India: the US Relations*, p. 18

use or the threat of use of weapons of mass destruction (WMD), development of India's security and defense preparedness, and promoting cooperation and understanding with neighboring countries on confidence building measures (CBM) and finally pursuing security and strategic dialogues with major powers and key partners.<sup>22</sup> Engagement on nuclear deal between the two world's largest democracy countries – India and the US - was of widespread interest by not only international community but also domestic institutions even though there prevailed political reactions in conflictual negotiation.

The US security interests in Asia drew India into its attention and the US set aside India nuclear test in establishing strategic partner. Increasing market with viable economy and free navigation of Indian Ocean are primary capability for US power calculation. Besides, China's growing in military capability became a key concern for the US and India upon which the US prevented the emergence of hegemonic power in Asia. But, the US sanctioned on India after 1998 nuclear test and it was revived in 2005. India and the US signed 10-year defense framework agreements for collaboration in multilateral operations.<sup>23</sup>

The US and India have held a series of unprecedented and increasingly substantive combined exercises involving all military services. Such military-to-military relations have been a key aspect of US-India relations and India now conducts more exercises and personnel exchanges with the US than with any other country. More than 50 formal events are occurring annually.<sup>24</sup> Navy-to-navy collaboration appears to be the most robust in terms of exercises and personnel exchanges.

The 9/11 attacks simultaneously posed the first test of opportunity for deepening U.S.-India counter terrorism cooperation. On the one hand, the attacks brought into stark relief the clearly common security interests and vulnerabilities that Washington and New Delhi shared. Beyond counter terrorism, the US helped India in investigations of terrorist attacks, including a major 2006 and 2008 bombing in Mumbai. Despite such progress, bureaucratic and political sensitivities have tended to hamper the development of more fluid cooperation. As an example, during the 2012 Strategic Dialogue, Indian External Affairs Minister Krishna raised the issue of India's interest<sup>25</sup> in further access to suspects involved in the Mumbai attacks who are in US custody.

President Bush's vision of a strategic partnership between the US and India in the 21st century is becoming a reality. The US welcomed India's emergence as a global power and recognizes that both our countries must act to ensure bilateral interests and to support bilateral relations. India and the US launched an Energy Dialogue on 31 May 2005 to build upon the broad range of existing energy cooperation and develop new avenues of collaboration.<sup>26</sup> It addressed all energy issues that are common to India and the US economies: civil nuclear cooperation and nuclear safety, environment-friendly renewable energy and energy efficient technologies, coal power and clean coal, and oil and gas. Moreover, Indo-US strategic partnership, moved beyond the Next Steps in Strategic Partnership (NSSP) to a Strategic Dialogue.<sup>27</sup> Global and regional security problems, high-

<sup>22</sup> Dr. Michael J Fratantuono & Others: *The US – India Relationship; Cross-Sector Collaboration to Promote Sustainable Development*, The Strategic Studies Institute, US War College Press, September 2014, p. 2 (Hereafter this work will be referred to as Fratantuono & Others: *US-India Relationship*)

<sup>23</sup> Kronstadt & Pinto: *India-US Security*, p. 6

<sup>24</sup> Kronstadt & Pinto: *India-US Security*, p. 6

<sup>25</sup> *Ibid.*, p. 16

<sup>26</sup> *Reaching New Heights; US-India Relation in the 21<sup>st</sup> Century*, (Fact Sheet), No Date, p. 5 (Hereafter this work will be referred to as *Reaching New Heights*)

<sup>27</sup> *Reaching New Heights*, p. 5

technology trade, space, and a deeper engagement on India's legitimate defense needs, including co-production of defense equipment, are now on the agenda after the Indo-US Nuclear Deal has been reached as an agreement.

In short, foreign policy autonomy is a top priority among New Delhi's defense import considerations. Moscow was the major partner for Indian defense and security priority during the Cold War when Indian parliament was dominated by majority communists. Ideological context was dominant in foreign policy choice of India throughout the Cold War. However, India stand significantly moved toward the Washington with the aim to accelerate more liberal international agenda for its nuclear technology development and domestic energy efficiency for economic development while Indian foreign policy choice shifted to more domestic political context in which Indian successive governments after late 1990s focused on its domestic attitudes towards foreign relations. On the other hand, the US military strike on Afghanistan under "War on Terror" highlighted the important role of India-US relations.

At the same time India became economically prominent in Asia and started to establish closer relations with Japan under "Look East Policy". India security platforms also emphasized on Indian dominance on Indian Ocean which was a strategically important for the US military and security presence in Asia.

Indian Administration under Manmohan Singh involved procuring reliable defense platforms that are not subject to stringent end-user requirements that can limit the country's operational decisions. The radioactive leak of Bhopal Incident was a major obstacle for Indian authorities to persuade the tough domestic attitude. As a result, India has displayed a longstanding aversion to signing paperwork or agreements that it perceives will impinge on its sovereignty. As a result of lengthy strategic dialogues, the US and India had a mutual interest in a stable, secure, and democratic Asia. Further recognizing India's growing role in the Asia-Pacific, Japan-India-US trilateral dialogue was established in April 2005. It was noted that the US and India are increasingly consulting on matters of mutual strategic interest around the globe.

### III. Negotiations on Technical Matter in Indo-US Nuclear Deal

#### Deal as implications to NPT and nuclear member club

The unprecedented US-India Civil Nuclear Cooperation Agreement was an important manifestation of new bilateral partnership. It was a long process, but technical consideration from both sides to reach to this Agreement. The underlying factor was that Indo-US Nuke Deal had to pass a number of stages in order to be operative, particularly in separation of nuclear facilities from civilian list and under safeguards of IAEA. There were some frequent stagnation in getting approval of Congress for Hyde Act, India withdrawal from NPT and the US insurances on India to place its three different types of reactors<sup>28</sup> – Power Reactors, Civil Reactors and Breeder Reactors – under NPT and IAEA safeguards to classify under civilian lists.

On 18 December 2004 the US President G W Bush inked the Henry Hyde Act to actualize Indo-US Nuke Deal. Then Prime Minister Singh in joint statement issued on 18 July 2005 to precede the implementation. At the same time, India had to work out a separate treaty

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<sup>28</sup>P R Chari (Ed.): *Indo-US Nuclear Deal; Seeking Synergies in Bilateralism*, Second Revised Edition, Routledge, Institute of Peace & Conflict Studies, New Delhi, 2009, p. 145 (Hereafter this work will be referred to as Chari: *Seeking Synergies*)

with the International Atomic Energy Agency (IAEA) in term of inspections of the civilian plants. Both Agreement and Deal were presented to the 45-member Nuclear Suppliers Group (NSG) for ratification. After getting approval and consensual endorsement by the NSG, the whole package including Agreement, Deal and NSG Endorsement had been presented to the US Congress for the final approval so as to enable the President to bring into force.<sup>29</sup>

Political institutional consideration was necessary to be successful for Indo-US Nuke Deal. There were several phases to reach the Deal. First phase in July 2005, President Bush announced the civilian initiative with India and the Congress sought more clarity on India's nuclear restraints. Second phase in March 2006, the US and India governments negotiated restraint involving the separation of India's civilian and military nuclear facilities.<sup>30</sup> In accord with this phase, India restricted plutonium production to only 8 of the country's 17 current reactors.<sup>31</sup> In the third phase, the US President Bush sought the congressional approval for civilian nuclear initiative which was the signing of Hyde Act. Fourth phase was to seek strong non-proliferation condition in congressional legislation through American business and Indian-Americans to move ahead with the Hyde Act. In the fifth phase, Indian government won parliamentary vote of confidence because leftist parties in India prevented from advancing nuclear agreement. In the sixth phase, after India negotiated safeguard pact with IAEA, the Nuclear Suppliers Group lifted nuclear trade restriction on India. Finally, the President Bush asked the Congress to formally approved 123 Agreement<sup>32</sup> as US and Indian governments proceed step-by-step to advance nuclear agreement.

In fact, India's nuclear establishment has historically been less involved in international negotiation. The initial step started with the Hyde Act which concerned with US cooperation. Hyde Act was known as US-India Peaceful Atomic Energy Cooperation Act of 2006. In fact, it was the US domestic law that modified the requirements of Section 123 of the US Atomic Energy Act to permit nuclear cooperation with India. The Hyde Act also permitted to negotiate a 123 Agreement to operationalize the 2005 Joint Statement. But the Hyde Act could not be binding on Indian sovereign decision.<sup>33</sup> Like Vienna Convention, an international treaty, the 123 Agreement could not also be superseded by internal law such as the Hyde Act.

### India and NPT

Internationally, the NPT has been assumed as disarmament and non proliferation of nuclear regimes. Non proliferation regime is the only access to nuclear fuel and technology which must be given only in exchange for signing the NPT after accepting all its obligations and joining the regimes.

The civil nuclear agreement proposed by India was an attempt without signing NPT since India withdrew from NPT after rival nuclear test against Pakistan in 2004. The reason was that India is in dire need of energy security for development purpose and withdrawal from NPT was to seek possible means in getting civilian use of nuclear energy. Unlike Pakistan, India had strong non proliferation record. India had promised to create the state-of-

<sup>29</sup> Carl Paddock: *Indo-US Nuclear Deal; Prospect & Implications*, Epitome Book, New Delhi, 2009, p. v (Hereafter this work will be referred to as Paddock: *Prospect & Implications*)

<sup>30</sup> Mistry: *Diplomacy and Domestic Politics*, p. 5

<sup>31</sup> Paddock: *Prospect & Implications*, p. 5

<sup>32</sup> Dainshaw Mistry: *The US-India Nuclear Agreement; Diplomacy and Domestic Politics*, Cambridge University Press, New Delhi, 2014, pp. 5-6 (Hereafter this work will be referred to as Mistry: *Diplomacy and Domestic Politics*)

<sup>33</sup> Mistry: *Diplomacy and Domestic Politics*, p. 15

art facility, IAEA monitoring and new export of nuclear control regime. IAEA was to restrict development of nuclear weapons through IAEA Safeguards, which was another mechanism for India to negotiate indirectly ratify the NPT.<sup>34</sup>

Indo-US Nuke Deal had three dimensions. First is the strategic-political dimension. Second is the nuclear weapons related and third is the energy dimension. This Deal paved the way for India to enable its status as non signatory to the Nuclear Non Proliferation Treaty (NPT) to have civilian nuclear trade with the US and the rest of the world.<sup>35</sup> This deal had also provided India as a quasi recognition on legitimate nuclear power. In fact, the NPT, the only multilateral commitment was now vague to global nuclear disarmament.

The US Congress and Indian Congress had long been in debating the limitation and rewards from legitimizing the Deal. The Deal allowed India to deploy or utilize its indigenously produced uranium exclusively for production of bomb making which can be raised even four times. Pakistan, neighbor and traditional rival to India, asked for the similar deal upon which the US and NSG bluntly denied.<sup>36</sup> As a consequence, the scene in South Asia even more volatile. India and the US moved against their historical policy on non proliferation of nuclear substances. The US still regarded the nuclear non proliferation as a prerequisite to civilian nuclear technology while India denied the position of the international safeguard at domestically constructed nuclear facilities.

Indian government through domestic political pressure attempted to resolve difficult negotiation with the US without signing NPT while India was against the separation of civil and military nuclear facilities. In December 2005, India and the US discussed India's nuclear power reactors under civilian list and under safeguards.<sup>37</sup> Of 22 power reactors, India offered only 14 power reactors under Safeguards.

New Delhi set up joint working group to discuss nuclear plants separation. But India government rejected the US plan in separating nuclear facilities and committed the control on India's Circus Reactors. Indian government provided proposal to Washington to moving forward. India's Circus Reactors, being placing outside of IAEA Safeguards, produced plutonium sufficient for 20-30 nuclear weapons. India draft separation plan excluded the Circus Reactors from civilian list in December 2005.<sup>38</sup>

For Breeder Reactor, India intended all breeder reactors for electricity grid and they were civilian reactor. India excluded all breeder reactors to keep outside of safeguard because India assumed that breeder was a research and development program upon which Washington did not accept India's position. After critical compromise between two sides, on 2 March 2006, India agreed to provide important commitment. It is a comprehensive agreement that would place the future civilian breeder reactors under safeguards.<sup>39</sup>

After the successful compromise for different reactor under safeguards, India later accepted the standard of IAEA safeguards in perpetuity though India in initial period attempted to seek non permanent safeguards that were similar to those for the nuclear power states. Under the compromise, the US offered fuel supply assurance for India's nuclear safeguarded reactors and India, in return, accepted the agreement to guard against withdrawal

<sup>34</sup> Paddock: *Prospect & Implications*, pp. 6-7

<sup>35</sup> Paddock: *Prospect & Implications*, p. v

<sup>36</sup> *Ibid.*, p. vi

<sup>37</sup> Mistry: *Diplomacy and Domestic Politics*, p. 67

<sup>38</sup> *Ibid.*, pp. 69-70

<sup>39</sup> *Ibid.*, p. 71

of safeguarded nuclear materials from civilian use at any time.<sup>40</sup> It was a unique compromise because IAEA safeguards accommodated India's specific position that permanent safeguards had been linked with fuel supply assurances.

Commercial issue of the Deal was prominent among Nuclear Supplier Group (NSG). NSG was an ongoing technical matter to discuss in Indo-US Deal. The US actively promoted the nuclear deal at the NSG. Countries who are not in favor of the 123 Agreement may abstain rather than vote against India, considering their political and economic ties with India. The Indo-US nuclear agreement also demonstrates the changes in the nuclear supplier regimes will not be restricted only to bilateral nuclear trade between the US and India. Nuclear energy companies became important players in the future of Indo-US Nuclear Deal as well as broader NPT regimes.<sup>41</sup>

In early mid 2007, after the US Congress passed the Hyde Act, Washington and New Delhi completed negotiations on their Section 123 Agreement for civilian nuclear cooperation. Both the US and India were unable to bridge their differences. President Bush personally attempted to intervene and to break the deadlock. Finally, officials both sides were ready to finalize Section 123 Agreement with relative low-to-moderate non proliferation.<sup>42</sup>

Although both sides discussed the 123 Agreement in 2006, the US had not satisfied that Indian team did not prepare to negotiate the text of Section 123 Agreement. India was so concerned about congressional legislation such as fuel supply restriction in Hyde Act. Negotiations then resumed in February 2007 which was followed by several talks in New Delhi, Cape Town and Washington sought to reach an accord by not mentioning some areas of disagreement. On 9 June 2007, national security advisors of both sides agreed to a negotiating solution based on a dedicated Indian reprocessing facility. President Bush discussed the compromise to look into the issue of fuel reserve for India's reactors.<sup>43</sup>

There were four general principles affected the US India negotiation on the Section 123 Agreement. First, the Washington sought firm restriction on areas that enhanced India nuclear weapons capability. Second, New Delhi sought to insist on fuel supply assurance. Third, Indian parliament affirmed that India would only accept position from the Joint Statement and from its separation plan of civil nuclear facilities from military facilities. Finally, Indian officials had read the US Section 123 Agreement with other countries and they sought clauses from these agreements in the US-India Section 123 Agreement relatively.<sup>44</sup> The Indo-US Nuclear Deal demonstrated that changes in NSG will not be restricted only to bilateral nuclear trade. Nuclear firms from several countries are already lining up to negotiate commercial nuclear deal with India within the appropriate IAEA Safeguards framework.

Thus, nuclear agreement between the US and India had been criticized on the grounds of the potential impact on global non proliferation regimes as well as its impact on Indian strategic nuclear program and stability of South Asia where Pakistan also possessed nuclear power. India still obtained credit and approval for nuclear trade from NSG and had to negotiate safeguards agreement with IAEA. Efficient India bureaucratic mechanism and

<sup>40</sup> Ibid, p. 72

<sup>41</sup> Paddock: *Prospect & Implications*, p. 133

<sup>42</sup> (a) Mistry: *Diplomacy and Domestic Politics*, pp. 127-128 (b) Chari: *Seeking Synergies*, p. 91

<sup>43</sup> Chari: *Seeking Synergies*, p.83

<sup>44</sup> (a) Paddock: *Prospect & Implications*, pp. 134-135

(b) Mistry: *Diplomacy and Domestic Politics*, p. 133

sizeable Indian economic development were the major domestic factor to have successful negotiation in civilian nuclear deal with the US.

Three years negotiation on Indo-US Nuclear Deal or Bush – Manmohan Singh Agreement was the foundation for the separation of civilian nuclear technology from military purpose nuclear technology. It was quite important for India as the Deal is the foundation for future nuclear technology development of India. There were several obstacles and stand-off due to heated domestic debates in India.<sup>45</sup> However, both sides continued the marathon discussions with many uncertainty of Indo-US Nuclear Deal.

#### IV. Conclusion

##### Regional Stability of Asia in the Context of Indo-US Nuclear Deal

##### Deal and its impact in South Asia

For the US, Asia is economically dynamic but geopolitically, it is a sensitive landscape as tension escalated in Korean Peninsula, in South China Sea, in Indo-Pak relations and at least in Afghanistan. According to IAEA 2009 Report, IAEA projects that Asia on massive energy requirements to fuel the economic progress and to meet the demands of a large population since Asia is one of the engines of world's nuclear energy growth.<sup>46</sup> Yet Fukushima accident in Japan urgently highlighted the world to revise nuclear energy projection in every continent, a major portion of the global expansion of nuclear power is still projected to be in Asia. In South Asia, many countries have plans either to considerably expand or to initiate domestic nuclear energy programs.

Besides, China's growing economic weight and expanding military capabilities are now translating into significant political influence on the Indian subcontinent. Its strong strategic partnership with Pakistan in the region has been steadily growing which generated friction with the US and continuous competition with India in South Asia.<sup>47</sup> Private enterprises, such as General Motor was prominent in attempting to have access from Indo-US Nuclear Deal, a sensitive negotiation in terms of military and security contexts.

India is in critical condition to abide international norms and to have access nuclear energy for civilian purpose. India has realized that it must maintain its relations with sole superpower in the world at the end of Cold War. Add to these situations, expansion of America's strategic partnership with India has been significant development in recent years. The US has assumed the India's role in Asia and typically in promoting peace and stability in South Asia and Indian Ocean.<sup>48</sup> At the same time, there is a considerable anxiety on impact and prospects concerning Indo-US Nuclear Deal. Yet both India and Pakistan walked out from NPT and India sought the way to develop civilian nuclear facilities within the internationally but partially framed agreements of IAEA Safeguards. It meant that India was not accepting full scope of safeguards. China and Pakistan are the two main factors for India to acquire nuclear technology in South Asia though India compelled itself to abide international norms as it intended to be a permanent UN Security Council member under UN Reform.

<sup>45</sup> Chari: *Seeking Synergies*, p.125

<sup>46</sup> Mohan: *Nuclear Energy*, p 73.

<sup>47</sup> *Asian Views on America*, p.3

<sup>48</sup> *Asian Views on America*, p. 4

There are four major discernible reasons for the US to enter Indo-US Nuclear Deal. First, India was in de jure nuclear weapon states but there is a tendency that “state (India) with advanced nuclear technology” to re-designate India. It was a strong point for the US as using India vulnerability due to acute shortages of natural and low-enriched uranium for its nuclear reactors. It became the next best option to limit the number of nuclear reactors that could be used for military and weapon-related purpose. Second, India was the best option to checkmate China in the US long term strategic perception in Asia. Thus, the President Bush named India as pivotal state in Asia. Third, India’s democratic structure was the best way for the US in making deal in such kind of security related sensitive negotiation and in turn, the US could consolidate its national interests with the largest democracy in the world. Fourth, India’s economic development was in momentum with eight to nine percent of GDP growth rate expecting to reach the world’s third largest economy in few years but poor infrastructure, diverse society and poor record of good governance were the weakness in expecting economic development of India. The lure of gaining preferential access to booming market in India and its high tech requirements, prominently for defense and atomic power technology also spurred the Bush Administration to negotiate the Indo-US Nuclear Deal.<sup>49</sup>

Politically, the successful conclusion of the nuclear deal was a tribute to the political leadership of PM Singh as well as the skill of negotiating team of Indian senior officials and nuclear scientists. It clearly heightened the India’s new foreign policy, especially PM Singh was no longer dominated by purely political issues.<sup>50</sup> It was observed that wider range of Indian national interests included security, trade and investment, energy and climate change. The impact of the Indo-US Nuclear Deal heightened the three important areas in making decision of its own foreign policy, that is, energy sufficiency, security outlook and India’s international status. Besides, the intense lobbying of US-India Political Action Committee (USINPAC) and US-India Business Council developed a strategy to have the largest impact on Deal’s Outcome. As an outcome of successful deal, India was enjoying and enhancing international status as it eager to cultivate India’s friendship and more seats opened for India in G-8, East Asia Summit and at least in the UNSC.

In the context of South Asia security in terms of IAEA, even though IAEA revised its projection subsequently after the Fukushima accident in 2011, the major portion of global expansion of nuclear power is still projected to be in Asia. Besides, in terms of legal nuclear architecture, except Israel, India, Pakistan and North Korea, all other countries of the world are party to the NPT. Both India and Pakistan located in South Asia have energy as well as weapon program by expending their share of nuclear energy. Bangladesh and Sri Lanka have plans to start a nuclear energy program.<sup>51</sup>

Moreover, state’s responsibility, liability to fundamental principles of law and domestic legislation are important in time of emergency, typically for unexpected nuclear fallout like in Chernobyl (1986), Bhopal (1992) and Fukushima (2011) accidents. Governments in the region have to ensure and emphasize the desire to forge consensus and points toward a risk precaution in larger geographical areas. In fact, there are series of conventions relating to nuclear non-proliferation namely Vienna Convention, Paris Convention and Brussels Supplementary Convention and IAEA sponsored international

<sup>49</sup> Chari: *Seeking Synergies*, pp. 7-8

<sup>50</sup> Ibid, p. 184

<sup>51</sup> M P Ram Mohan: *Nuclear Energy and Liability in South Asia; Institutions, Legal Frameworks and Risk Assessment within SAARC*, Springer India, New Delhi, 2015, p 5 (Hereafter this work will be referred to as Mohan: *Nuclear Energy*)

nuclear liability regime (Convention on Supplementary Compensation or Compensation Convention SCS) that the states have to ratify for emotional responsibility. Major question on avoiding trans-boundary liability was a major issue after Chernobyl incident.<sup>52</sup>

It observed that any country could easily reject liability claim and refuse payment of any compensation in case of trans-boundary nuclear fallout. When Chernobyl incident happened in 1986, countries in East Europe and in North Africa were fallen under severe radiation fallout. But the former Soviet Union rejected the liability claims and compensation to all claimants. Besides, countries in Asia and South Asia are still outside of some international conventions and domestic legislation is strongly influenced to ratify the international convention. It means many countries in South Asia are not installed with democratically elected government and legislative chambers so that it is a barrier in implementing international standard and regulations like IAEA Action Plan on Nuclear Safety. Prominent example was the withdrawal of India and Pakistan from NPT even though India is well known for its democratic principles. But, when radiation leaked from Bhopal nuclear plant in 1994, it was observed that India was not ready for unexpected nuclear leak or incident.

Apart from unexpected nuclear fallout, as the list of aspirants to extend civilian nuclear use to neighboring countries namely Saudi Arabia, Egypt and Turkey, the real danger of nuclear weapons falling into the hands of terrorist groups, probably in Pakistan which became a unthinkable outcome rather than nuclear proliferation. In fact, India with other South Asian countries is vulnerable to energy security while national security is the serious importance to India and its neighbors.

### **Lessons learnt for Myanmar**

It is a clear message that national development depends on energy security and Myanmar needs to lay down renewable energy sources including nuclear energy. Being a signatory to NPT, Myanmar must have clear understanding on technical definitions, legal obligations and rights offered by the international conventions and agreement. It is clear that Myanmar is granted the right to establish not more than 10 MW nuclear energy plant for civilian and medical purpose. It is to note that Myanmar is not a signatory to the UN Treaty on Prohibition of Nuclear Weapons which was adopted by 122 nations in July 2016. Only 58 nations signed the Treaty and three countries namely Thailand, Ghana and Vanuatu.

But safety concerns including GDP growth rate, foreign reserve, transparent manner and procedures in dealing with technology transfer and at least the plant location or site are the significant factors. Besides, human resource in implementing rules, regulations and norms prescribed in international conventions is also vital in dealing or negotiating with international bodies. Without clear and proper understanding on conventions caused the country in ambiguity. Being located on the Himalayan tectonic plate, site location for nuclear power plant is a critical concern. Add to these factors, tranquility, law and order in domestic politics is essential for national development, particularly to prevent from possible terrorist attack and emergency arrangement with full experience and knowledge of nuclear use for civilian purpose. It needed strictly to adhere to the principle not to use nuclear energy for military purpose which is the breach of international law.

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<sup>52</sup> Mohan: *Nuclear Energy*, p 5

There are other informal actors in concluding the Indo-US Nuclear Deal, Such actors were the American Indians in the US who were the important political figures in American development like presidential candidate in 2015 Presidential campaign forcefully feed back to Indian government and the US congress which is crucial in American foreign policy decision even though the US president in constitution has the power to decide foreign policy. So successful lobbying of Indo-US Nuclear Deal was crucial for both the US and India in domestic and international landscape in shaping national interests and security through elastic and flexible approaches.

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