

## **Changing Asia Series**

### **The Indo-U.S. civil Nuclear Agreement – Ten Years After**

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I wish to thank the Society for Policy Studies and the India Habitat Centre for inviting me once again, to deliver a lecture under their prestigious Changing Asia Series. This Series has proved to be a most useful initiative in fostering public education and reasoned discourse on key strategic and foreign policy issues. I am delighted to be given yet another opportunity to contribute my own perspective on some of these issues. I am honoured that my good friend Commodore Uday Bhaskar is presiding over this event and I also wish to thank Shri Rakesh Kacker, Director General of the India Habitat Centre for making this event possible.

Considering the storm and thunder that attended its birth, the Indo-U.S. civil nuclear agreement appears to have receded from public consciousness in just a span of 10 years. It was a deal which some regarded as providing India the veritable “keys to the kingdom”. Others condemned it as a dangerous trap designed to deprive India of its much vaunted political independence and its family jewels in the shape of its indigenous strategic programme. Today, it sits comfortably as an enabling asset, taken mostly for granted, in India’s diplomatic tool-kit. Exaggerated

expectations may have been belied, but those predicting imminent doom, have mostly turned to scoffing at what they see as meager pickings rather than lamenting the bitter harvest that according to them we should have reaped by now.

A similar spectrum of positive and negative perceptions were to be found in Washington. Those opposing the deal saw it as a wrecking ball demolishing the nuclear non-proliferation edifice and handing India a trophy it did not deserve. The supporters saw the deal as the anointment of India as America's ally, ready to align itself to America's direction. And American business saw the deal as opening the door to India's expanding market, not the least in the civil nuclear field. The bandwidth between the two ends of the spectrum has narrowed as neither doom nor bloom have come to pass. The pendulum still swings a decade later this way and that, certainly among the ranks of Washington's think tanks, but there, too, the Indo-U.S. nuclear deal mostly enjoys the after-glow of a historic agreement.

Ten years provides just enough distance to revisit the nuclear deal and attempt a more balanced and sober assessment. My involvement in the negotiating process, from start to finish, was intense. There were moments of elation when an unexpected breakthrough was achieved. There was dark despair when the odds appeared insuperable. But now, with the benefit of hindsight, one begins to see the same highs and lows from a more rounded perspective and as a flow with its own logic rather than as a series of discrete, disconnected moments.

My first observation is that the Indo-U.S. nuclear deal was both a reflection of the major transformation in Indo-U.S. relations since the end of the Cold War, as also a driver of their further transformation. The realignment of major power relations in the aftermath of the collapse of the Soviet Union began a process of transforming Indo-US relations from estrangement to engagement and a growing awareness of shared interests. Neither side would have been able to contemplate such a significant departure from their established positions in a sensitive area such as the nuclear domain, if they had not already achieved a fair degree of congruence in their respective strategic perspectives as well as mutual confidence.

I see this process of growing convergence accelerating with the 14 rounds of talks between the then U.S. Deputy Secretary of State, Strobe Talbott and India's Jaswant Singh, who later served as Foreign Minister. These talks were held between June 1998 and July 2000 and focused on how the two countries should manage the fallout from the May 1998 nuclear tests undertaken by India. These talks were inconclusive but they did establish that the U.S. would no longer aim to "put the genie back in the bottle" as Talbott put it and accepted the reality of India as a de facto nuclear weapon State.

Indian confidence in the U.S. was bolstered by the latter's reaction to Pakistan's Kargil adventure in May-July, 1999. The U.S. categorically endorsed the inviolability of the Line of Control and successfully pressured Pakistan to vacate the areas it had occupied on the Indian side of the LOC. India was henceforth effectively de-hyphenated from Pakistan in US calculations. The Talbott-Jaswant talks and the U.S. support in the Kargil episode, created a positive environment for President Clinton's successful visit to India in March 2000, when the sanctions imposed on India after the nuclear tests were also lifted.

India's unambiguous support to the U.S. after the tragic events of 9/11 in 2001 and the sense it created of the two liberal democracies being on the same side in the global war on terror, the endorsement of President Bush's ballistic missile defence (BMD) initiative and the visible prospects of a democratic India finally beginning to deliver on its immense economic promise, formed the backdrop of the next major initiative, the "Next Steps in Strategic Partnership" which were announced in January 2004. The NSSP, as it became known, detailed a series of reciprocal steps which would allow limited, but nevertheless, significant bilateral cooperation in the nuclear and space areas after a hiatus of several decades, clear the decks for supply of sensitive and dual use technologies and initiate discussions on possible cooperation in ballistic missile defence. In this context, India committed itself to aligning its export control regime with the Nuclear Suppliers' Group

and the Missile Technology Control Regime. It also agreed to enact legislation to give effect to its commitment under the UN Security Council Resolution 1540, which dealt with the spread of WMD related technologies. India passed its comprehensive WMD Act in May 2005. The revised export control lists were also shared with the U.S. These steps led the two countries to announce in July 2005, in advance of Prime Minister Dr. Manmohan Singh's visit to Washington, that they had successfully concluded the NSSP.

There is another development which is worth taking into account and that is the close cooperation between the naval forces of India, U.S., Japan and Australia in December, 2004/January, 2005 to render assistance to countries in South and South-East Asia after the tsunami struck several countries, causing extensive death and devastation. Indian naval forces were able to deliver prompt and substantial relief to countries far away from its shores. To the U.S. and its partners, India had established itself as a significant security provider in the Asia-Pacific region. India began to be seen as an indispensable partner in coping with the emerging security challenges in the region, in particular, the rapid emergence of China as a power with major economic and military capabilities.

This then is the backdrop to the historic July 18 Indo-U.S. Joint Statement, which committed the two countries to resume "full civil nuclear cooperation". The nuclear deal should be seen as a culmination of a process of intense dialogue and engagement in the aftermath of the Indian

nuclear tests of May 1998, which first interrupted, but then accelerated the transformation of Indo-U.S. ties that was already taking place since the end of the Cold War. The deal was made possible by the growing strategic congruence between the two countries; it did not create that congruence but certainly enhanced it.

My second observation relates to the negotiating process itself. These negotiations were unique in many ways. They were mandated by the leaders of the two countries and undertaken by negotiators answerable to them. This was a top-down process and one in which leaders remained involved and often intervened to achieve what they had set out to. I wish to enumerate at least three occasions on which the personal intervention of Prime Minister, Dr. Singh and President Bush, helped overcome what may have appeared at the time as inseparable obstacles.

The first instance relates to the events leading up to July 18, 2001 itself. It may be recalled that US Secretary of State, Condoleezza Rice visited India in March of that year to prepare for the Prime Minister's visit to the U.S.. It is during this visit that the US committed itself to clearing the decks for the resumption of bilateral cooperation in civil nuclear energy, thereby seeking to remove the often bitter and negative legacy of the past. For India to emerge as a partner to the U.S., it could no longer be treated as a target. In order to negotiate the principles on which such cooperation could be resumed and the practical steps that would need to be taken reciprocally in this regard, a negotiating group was set up, headed by the U.S. Under Secretary of State, Nick Burns and myself as India's then

Foreign Secretary. In the ensuing two months, there were difficult, sometimes acrimonious, negotiations over that one key section of the proposed joint statement on civil nuclear cooperation, to be issued during the Prime Minister's visit to Washington. The final touches were still being worked out in the days preceding the visit in meetings that took place in the U.S. capital. A few loose ends remained and these were sought to be tied up in an important meeting that Rice had with Shri Natwar Singh, the then External Affairs Minister, in the afternoon of July 17. The Prime Minister met his full delegation the same evening to consider our handiwork. This was not a pleasant meeting. Some objected to the very idea of having such an agreement with the U.S. Others objected to specific formulations which seemed to detract from India's status as a nuclear weapon state. The end result was that the PM decided against the inclusion of this section in the Joint Statement. I was asked to convey this to my counterpart and to suggest anodyne wording committing the two sides to continue deliberations on civil nuclear cooperation. The reaction from the U.S. side was one of disappointment. Early next morning I received a call from Nick Burns to convey that Secretary Rice wished to have an urgent meeting with our PM at Blair House where the latter was staying. Dr Singh was reluctant to meet her and asked Shri Natwar Singh to receive her instead. When Rice arrived she persuaded Natwar Singh to take her to PM as she had an important message to convey from President Bush. During the meeting she conveyed the President's keen desire to clinch this historic deal and expressed her willingness to take on board Indian concerns relating to the formulations in the Joint Statement. Dr Singh then asked the then Chairman of the Atomic Energy Commission to give in writing what

changes he would like to see in the wording so as to allay his concerns. Kakodkar did so reluctantly. These were shown to Rice who said they could be worked into the text appropriately. She asked whether we could go ahead with the Joint Statement if the two sides could reach agreement on a new text. Encouraged by Natwar Singh, whose constructive role is not often recognized, Dr Singh gave his assent. There followed yet another round of negotiations between Burns and myself with fresh objections coming this time from the U.S. side. We had not finished our negotiations even while the two principals went in for their summit meeting. Eventually just before the summit ended we wrapped up our meeting with a final text ready to be announced at the ensuing press conference.

The second instance relates to India's Separation Plan, by which we had agreed to list the nuclear plants which would fall into the civilian category and those which would be in the strategic or non-civilian category. This was necessary in order to ensure that whatever we received through cooperation with the U.S. would not be diverted to military use. Only the civilian reactors would be offered for voluntary safeguards under the International Atomic Energy Agency (IAEA). The U.S. held that once the civilian nuclear facilities went under safeguards, there would remain so permanently even if fuel supplies were terminated for any reason. Our position was that safeguards would be accepted only so long as fuel supplies continued uninterrupted. We did not wish to face the kind of disruption which affected the Tarapur plant which continued to be under safeguards even though the U.S. had ceased fuel supplies post the 1974 nuclear test by India. After President Bush arrived in Delhi on March 5, we began a final round of negotiations to overcome this issue. The U.S. was adamant that safeguards would have to be permanent while we countered

by saying that without assurance of permanent and uninterrupted fuel supplies we could not accept this. Despite several hours of talks stretching well beyond midnight we were unable to square the circle. The fate of the Separation Plan thus hung in balance. The next morning, at Hyderabad House, even while the principals commenced their summit meeting, another meeting was scheduled among senior officials, including the NSA Shri Narayanan and myself on the Indian side and the U.S. NSA Steve Hadley and Nick Burns on the American side. At this meeting, Hadley conveyed to us the fuel supply assurances which he said President Bush himself had approved. These included the entitlement of the Indian side to maintain fuel supply reserves to last the last the lifetime of each of our reactors. (You might have seen a news item this morning about the government's plans to build up a strategic reserve of fuel for our nuclear power programme.) On this basis, the DAE came on board and the Separation Plan was announced after the summit meeting. The multilayered fuel supply assurances were incorporated in toto in the Plan and reiterated in the eventual 123 agreement subsequently. As far as I am aware no country has such an entitlement written into a legal instrument.

The third instance of leadership intervention relates to the issue of reprocessing of spent fuel. India wanted an upfront and permanent entitlement to reprocess spent fuel derived from foreign origin nuclear fuel. This was flatly refused initially but conceded after Dr Singh personally took it up with President Bush on the sidelines of one of the multilateral meetings. This was incorporated in the 123 agreement but on condition that reprocessing would take place in a separate dedicated facility and under IAEA safeguards and subject to certain administrative arrangements being

worked out. I understand that these have been concluded only recently but the facility is yet to be built.

I have cited these instances to underscore the fact that the negotiations leading up to the deal benefited from the personal involvement of the leaders of the two countries and without their intervention at crucial junctures I doubt that we would have been successful.

My third observation relates to the critical role of practical diplomacy in mobilizing support for the deal and this in many ways was a new and learning experience for both sides. This was the first time that Indian diplomats reached out directly to US senators and Congressmen seeking support for the deal. I must have made several rounds of Capitol Hill, spending hours persuading skeptics and enthusing those positively inclined. The Embassy in Washington and the then Ambassador Ronen Sen were equally active in this respect. This was also the first time that the Indian-American community was mobilized in such a focused effort to line up U.S. Congressional support behind the deal. A parallel effort was made with the US business community as well. Here too, I must acknowledge the role played by Ronen Sen and his able colleagues in the Indian mission. The U.S. fielded an outstanding team on its side. My early conversations in Washington were with Phil Zelicow, Counsellor in the State Department, already well-known for his bold strategic thinking. We spent several hours exchanging views on the rapidly changing Asian and international order and on what might be our shared interests in dealing with the changed scenario. Most of the subsequent negotiations were with Nick Burns who pursued his mandate with dogged persistence. And his successor, Bill Burns was a reassuring presence and source of support when the going

got really tough at the NSG. The Indian team also appreciated the role played by Ashley Tellis, who helped smooth many a prickly standoff between the two sides.

After the bilateral deal with the U.S. had been successfully concluded an even more complex set of negotiations had to be undertaken with the 48 member Nuclear Suppliers' Group in order to ensure a waiver for India from its own rules and guidelines. The U.S. undoubtedly helped but much of the burden fell again on Indian diplomacy. Since the NSG works by consensus our challenge was all the more daunting. Sometime in 2007 I began to concentrate more on the NSG leaving it to Foreign Secretary Menon to handle the bilateral track. As Prime Minister's Special Envoy, I must have travelled several thousand miles visiting countries like Japan, ROK, Brazil, Argentina, Mexico, Chile, Germany, Sweden, Norway, Ireland, Australia and New Zealand persuading mostly skeptical interlocutors that India deserved their support for an India-specific waiver without accepting any constraint on its strategic programme. In summit meetings the PM held with his counterparts this message was reinforced. In Vienna itself our lobbying was relentless, sometimes frustrating, sometimes encouraging. Foreign Secretary Menon interacted with the members of the NSG arguing India's case persuasively and answering queries patiently. Away from the scene, the two NSAs, Narayanan and Steve Hadley worked the phones and helped in facilitating the final consensus decision. But the prize was in hand on September 8 when the NSG adopted a consensus decision on giving India a clean waiver from its rules. India had finally made a successful re-entry into the international civilian nuclear market.

There is a perception that China played a blocking role at the NSG. It is true that China was opposed to the waiver but preferred to encourage the

smaller countries, who had very rigid positions on non-proliferation, to take the lead in proposing killer amendments to the draft decision. On September 8 when it became clear that the last holdouts were going to vote in favour of the waiver, the Chinese mission sent a written communication to our delegation at the hotel, early in the morning, conveying that China had decided to support the draft decision as formulated. They were thus avoided being the last country to convey support.

My purpose in conveying these details is to underscore the importance of traditional diplomacy in advancing India's interests. Much of this work requires patience, perseverance and hard work away from the spotlight. This is where professional skills matter and I have no hesitation in saying that the team I had the privilege to work with, including Jaishankar the current Foreign Secretary and later Gaitri Kumar among several others, would rate among the very best in the world.

My fourth observation relates to a principle which is applicable in all negotiating scenarios but is often lost sight of. Before engaging in negotiations it is important to have a clear mandate and red lines that must not be crossed. Knowing what the bottom line is gives the negotiator the flexibility to compromise and confidence in insisting on what cannot be conceded. We were fortunate that in these negotiations, the mandate given to us was clear and unambiguous. The brief given to us by the then Prime Minister was that we should seek the dismantling of technology denial regimes which were limiting our development prospects, that we should aim to re-integrate India into the international civil nuclear market as a fully entitled member and achieve this without accepting any constraint whatsoever on India's strategic weapons programme. When the Hyde Act was passed there was considerable controversy over its provisions, some

pretty gratuitous, others prescriptive. However, what persuaded us to continue with the process was that the law gave India permanent and unconditional waivers from the key provisions of the U.S. Atomic Energy Act, which stipulate that the U.S. cannot engage in civil nuclear energy cooperation

1. With a State which has exploded a nuclear explosive device; India had done so as recently as in May 1998;

2. With a state engaged in the production of a nuclear explosive device; which India is engaged in as a nuclear weapon state; and

3. With a state which does not have all its nuclear facilities under full-scope international safeguards, which of course India did not since several of its facilities would be in the non-civilian, non-safeguarded category.

These explicit waivers outweighed some of the other onerous provisions in the Act and became the basis of the “clean waiver”, we were subsequently able to get from the NSG.

Another instance of a “red line” that was successfully defended was in respect of the separation of civilian from non-civilian nuclear facilities. The U.S. initially insisted that this must include the separation of personnel as well and this would be subject to verification. This we could not accept in principle. This would also have been impractical. It would have required our accepting a level of intrusiveness which would be politically unpalatable. Even hours before President Bush landed in Delhi in March 2006, this demand was repeated again and again with the threat that it could become a deal breaker. It was the confidence and assurance with which one declined this demand which led the U.S. to drop it and never raise it again.

And finally, India was able to successfully resist the demand to turn its voluntary moratorium on nuclear testing into a legal commitment, both in

the bilateral context with the U.S. and the multilateral context with the NSG as a condition for resumption of civil nuclear cooperation. This was a clear red line from the outset in the negotiations and we never wavered from it.

My sixth and last observation concerns the importance of strategic communications or the management of political and public perceptions. This is one area where our record could have been better. We were unable to persuasively convey the benefits of the deal, tangible as well as intangible. This was partly due to the complex nature of the subject itself but also because within the ruling coalition itself there were strongly skeptical views about the unfolding partnership with the U.S. Opposition to the deal was not so much on its merits than as reflective of the continuing suspicion of the U.S.

The failure of strategic communications may also be seen in the inept manner in which the issue of Civil Nuclear Liability Law was handled and which created a legal mess which the U.S. President Obama and Prime Minister Modi bravely tried to untangle during their summit in January this year. The Convention on Supplementary Compensation for Nuclear Damage under the IAEA had been in negotiation for several years and had no connection with the Indo-U.S. nuclear deal to begin with. In fact the Protocol on this was adopted as early as 1997 much before India and the U.S. had any intention of resuming civil nuclear cooperation though it has come into force only now. It was an initiative taken after the Chernobyl nuclear disaster to ensure the speedy delivery of relief and compensation to victims of any future accident. It was agreed that the plant operator would carry the financial responsibility to distribute relief up to a certain pre-determined limit to those affected without waiting for the results of any investigation. Countries establishing such arrangements through domestic

legislation would then be entitled to draw supplementary relief from an international fund contributed to by countries with significant nuclear facilities and administered by the IAEA under a Convention on Supplementary Compensation. Thus in order to sign up to the Supplementary Convention all that was required was a simple enabling domestic legislation making the operator liable financially to distribute relief in the first instance and to indicate the limit to which it would do so. The financial liability cannot be open-ended since it could not then be covered through insurance. Once the financial liability is fixed, the operator would take out insurance for that amount and the premium would be passed on through increased tariff. Therefore the limit would have to take into account the impact on economic viability of the nuclear power business. The legislation has a limited purpose of enabling participation in the Supplementary Convention. It was not expected to deal with the issue of supplier liability. The latter is usually dealt with in a commercial contract and in fact has been in the past. Instead of educating political parties and public opinion on this background, the government let itself be pressured into accepting provisions which went far beyond the original rationale for the legislation. It allowed the impression to take hold that another Bhopal tragedy would befall us without stringent and far-reaching legal provisions. In fact the original purpose of the legislation was precisely to avoid a Bhopal like situation by ensuring immediate and unconditional relief. The mess was compounded by the law indicating an additional government liability of Rs 1000 cores. However, government's liability towards its citizens affected by disaster is unlimited . It cannot be that the government will stop giving relief once the limit of a thousand crores is reached. The

entire exercise of passing the legislation is a case study of how things must not be done. Hopefully this is behind us now.

What did the nuclear deal achieve for India? Most importantly it expanded India's strategic space, enabling it to leverage its enhanced relationship with the U.S. to upgrade its relations with other partners as well. That the U.S. was prepared to take such a major initiative with India despite the risks to its non-proliferation objectives, put India in a category of major global players and Delhi as an indispensable destination for leaders across the globe. The deal also led to the dismantling of most of the technology denial regimes operating against India since 1974 and which had been progressively expanded to cover most dual use items as well. Since the deal was concluded barely 0.5% of high tech US exports are subject to licensing. In 2005, the figure was 10%. The U.S. lead has been followed by other major high tech supplier countries like Japan and Germany. The relaxation of export controls has also led to a significant increase in defence related trade and collaboration with the U.S. as well as with other partner countries. It is true that so far deals for setting up new nuclear plants have not been materialized. The nuclear liability law was an issue but now that it has been resolved we may begin to see some progress. However, the deal has opened the way for India to conclude long term uranium supply agreements with several countries. This has enabled capacity utilization in our nuclear plants to reach 80-85% when in 2005 shortage of fuel due to NSG restrictions had pushed utilization down to 30-35%. India is very much in the international mainstream as far as nuclear issues are concerned despite continuing to be outside the NPT. Its membership of the NSG is being supported by the US and is likely to come

through though there are challenges which need to be overcome through intensive diplomacy.

Ten years after the deal was announced, India-U.S. relations are stronger than they have ever been. They may not have been if the nuclear deal had not cleared the decks of the negative legacies of the past and created a culture of engagement and dialogue. The deal was being commemorated in Washington recently and its importance was underlined by the U.S. Vice-President himself attending one of the events and delivering an important speech. What he said certainly resonates among those of us who were privileged to be associated with its negotiation. He observed that ultimately this deal was not so much about the nuclear issue as it was about India. It reminded me of similar remarks made to me by the Brazilian, Mexican and South African representatives just after the NSG waiver was extended to India on September 8, 2008. They conveyed their warm congratulations on a signal achievement against the most difficult odds but added, Make no mistake this has been possible only because it was for India.

I thank you for your attention.