



PM's Visit to the US: Examining the Nuclear Deal

*Dr. Stuti Banerjee**

Introduction

Ties between India and the US have flourished over the past decade. A paradigm shift occurred as a result of the landmark India- US nuclear deal. Recent visits by two top US statesmen, Secretary of State John Kerry in June 2013 and Vice President Joe Biden in July 2013 have brought into focus the importance of India in the US foreign policy.

As President Barak Obama settles into his second term, New Delhi has tried to reassess its relationship with Washington. These include strengthening security and military cooperation, civil nuclear trade, boosting economic growth and cooperation on various regional and global issues.¹ Since President Obama's 'inauguration' in January 2009, supporters of strategic cooperation between India and the US have expressed dissatisfaction at the absence of a new impetus to the positive relationship which developed between the two countries during the Presidency of George W. Bush. Critics of President Obama have time and again pointed out at the 'strategic warmth' under President G.W. Bush and its apparent absence under his successor. In addition, they argue that President Obama has developed a closer relationship with China over India when discussing global issues and with Pakistan over India on regional issues involving the subcontinent.

Senior US government officials challenge these perceptions, and argue that Prime Minister

Manmohan Singh was the first State guest at the White House in November 2009 during President Obama's second term in office. It was during this visit that President Obama described the India-US relationship as, "...the defining relationship of the twenty first century." It was also during his term that India and the US established the 'Strategic Dialogue', an important annual event in the calendar of the foreign ministers of the two countries. During his maiden visit to India in November 2010, President Obama made it known that the US considered India to be its most important strategic partner.

The US is currently promoting its 'rebalancing' policy for Asia in which India plays an important role as an emerging international player with a stable economy and a thriving political system. India's success with democracy is also viewed as critical to the US interests and helps promote stability in the region.

The two countries are not always in perfect harmony with one another on every issue. The US wants India to continue reducing its dependence on Iranian oil, alter the liability laws for the implementing the civil nuclear cooperation agreement, open the economy for foreign investment and enact reforms in foreign direct investments. India, on the other hand, wants to end the Iranian crisis without the use of military force, not withstanding its difference with Iran on the detention of its tanker, is unlikely to amend the liability clause and is opposed to entering into a formal security agreement with the US. This could be viewed as a compromise to its inviolable strategic autonomy. India has also expressed reservations about the US policy in Afghanistan which was highlighted in the Fourth India- US strategic talks, held at New Delhi in June 2013.

These divergent views have led a few Indian and US commentators to deduce that the relationship has reached a point of stagnation. In such circumstances the visit by the two high profile officials of the US government within a few weeks of each other has raised expectations within the political and strategic community.

The Two Visits

John Kerry's visit to attend the 'Strategic Dialogue' was much anticipated as it was his first visit as the US Secretary of State. The visit was to strengthen India-US ties as also to build a personal

relationship with his counterpart, External Affairs Minister Salman Khurshid. The dialogue process covered issues that are of importance to both countries. For India these include progress on the nuclear deal, US-Taliban talks prior to the withdrawal from Afghanistan, changes in US immigration laws and visa norms, the concerns of Indian business community and also the need for greater defence cooperation. For the US, Secretary Kerry spoke on issues ranging from climate change to economy, and from defence ties to the civil nuclear deal.

The visit by Vice President Joe Biden was a continuation of the dialogue process that started during Secretary Kerry's visit. The economic aspect of the visit was evident from the large business delegation that accompanied Vice President Biden as well as the importance given to his visit to Mumbai, the financial capital of India. It would seem that the purpose of Vice President Biden's visit was to keep alive the dialogue with a country whose economy and strategic ties are critical to building US stature in the region.

The Prime Minister's Visit

While the two visits followed in close succession, the lack of a vision document or any such concrete agreement between the two nations has disappointed many. The issue of stagnation in the relationship has been upmost in the minds of commentators and foreign policy experts. While some have viewed this as a negative trajectory of growth in the relationship, it is not necessarily so. The plateau in the relationship also means stability and predictability. Today, relations between the two countries are strong and uneventful. This is an indication of the understanding that they have been able to generate. It is also a mark of progress in a relationship that was distant until a few years ago. India's National Security Advisor Shiv Shankar Menon during his recent visit to the US described it as, "...one of our most important relationships which has ... transformed over the last few years,"² noting the two countries have as many as 32 separate dialogues under progress on a broad range of relations.

Emphasising the progress in the relationship and to further dispel any misunderstandings that may exist between the two sides, Prime Minister Manmohan Singh is visiting Washington from September 25 to September 30, 2013. The visit is to attend the United Nations General Assembly

and, thereafter, a bilateral summit in Washington. The two leaders are expected to have a wide-ranging agenda to review the full spectrum of the relationship encompassing agriculture, industry and trade, science and technology, anti-terrorism, security and a number of global issues. The focus of the visit would also be to exchange ideas on enhancing security cooperation and deeper economic engagement, as well as review progress made in the implementation of the civil nuclear deal.

Expectations are high that an announcement on the long stalled agreement between Nuclear Corporation of India Limited (NPCIL) and Westinghouse is possible during Prime Minister Manmohan Singh's visit. Westinghouse will supply civil nuclear technology to government-owned NPCIL for the 6,000 MW Mithivirdi nuclear reactor in Gujarat. NPCIL might announce US \$100-175 million as the first token payment for the Gujarat reactor to coincide with the signing of the agreement.

The Nuclear Agreement

The civil nuclear agreement or 123 Agreement³ has generated considerable interest in both India and the US. The agreement was first announced in a joint statement⁴ by Prime Minister Manmohan Singh and President G.W. Bush in 2005, ending the nearly three decade old US moratorium on nuclear trade, imposed on account of the nuclear tests conducted by India in 1974 and reinforced after its nuclear tests in 1998. The landmark agreement was signed by India and the US in 2008 and cleared by the Nuclear Suppliers Group (NSG) in 2008. It was successfully voted by the Indian Parliament and also ratified by the US Congress. The US government passed the Hyde Act (2006) to facilitate the implementation of the deal by exempting India from certain provisions of the US Atomic Energy Act (1954). The agreement provides India access to the US nuclear technology and other assistance for the civilian nuclear energy programme, and expands cooperation between the two countries in energy and satellite technology. The deal also allows India to buy US dual-use nuclear technology, including materials and equipment that could be used to enrich Uranium or reprocess Plutonium, potentially creating the material for nuclear weapons. It would also receive imported fuel for its nuclear reactors.

Energy security is an essential part of India's national security apparatus and diversification in the energy mix is a step in that direction. Nuclear energy is an option that India has decided to explore. Despite the sanctions, Indian nuclear scientists have been able to develop indigenous technology to continue operations; however they need to collaborate with their foreign counterparts. The deal with the US helps India to acquire new technology as also to participate in its development. Nuclear fuel is an important aspect of this deal; India still needs to import Uranium to rapidly expand its capacity to generate nuclear energy.

The question arises why the US decided to sign the agreement, marking a sharp departure from its nuclear nonproliferation commitments. After the nuclear tests by India in 1998, it was apparent to the international community that neither the sanctions have the desired effect nor was India willing to renounce its nuclear weapons programme. It was not in the US interest to isolate India through sanctions; rather it was in its interest to bring India within the ambit of the rules and regulations of the International Atomic Energy Agency (IAEA) and NSG, thereby strengthening the nonproliferation regime. The agreement was expected to lead to nuclear technology cooperation in developing safer reactors that would also be cost effective and have higher efficiency.

The agreement is also important for the US. On the basis of the 2008 bilateral agreement, US companies—most importantly Westinghouse and GE-Hitachi—plan to build nuclear power plants in India. A US-India trade group claims that this business may ultimately be worth US \$130 billion by 2030. William J Burns, Under Secretary for Political Affairs, gave a more modest figure of 3,000-5,000 new direct jobs and about 10,000-15,000 indirect jobs in the US if US firms won two bids for new nuclear plants in India.⁵

There was also the possibility that India might favourably view the Comprehensive Test Ban Agreement (CTBT) and the Fissile Material Treaty (FMCT), the two agreements it has refused to sign due to its own security concerns. It was also anticipated that, given the depth of the relationship, the US could hope to have India's support on various international issues such as sanctions against Iran.

For India, the deal was one step in a series of agreements that would bring the two countries

closer. The deal is also a vindication of New Delhi's self-imposed moratoriums on nuclear weapons testing. It is testimony to the nonproliferation record the country has been able to maintain. The deal also provides India with an opportunity to forge a new strategic relationship with the US. By the turn of the 21st century, balancing China's growing power is becoming a strategic imperative for the US. The US views India as a possible balancer to China because of its sheer size, geography, military capabilities, industrial potential, economic strength and democratic political values. The nuclear deal can provide the edifice for a robust security relationship between the two states centred on balancing Chinese power. However, India has made it clear time and again that its foreign policy would be influenced by its national security and interests, and would be anchored in independence.

While both states are keen to implement the agreement, in the past five years there has been little progress. Much of the interest that it generated has dissipated, especially among foreign policy thinkers within the two countries, who feel that the agreement has failed to meet expectations.

There are a number of impediments that need to be cleared for the agreement to be implemented. The Civil Liability for Nuclear Damage Bill (2010)⁶ passed by the Parliament has caused a rift between the Indian entities and the US nuclear suppliers. The bill seeks to create a mechanism for compensating victims of nuclear damage arising from a nuclear incident. The US had opposed two of the provisions that stemmed from the legislature's refusal to indemnify foreign suppliers from accidents caused by faulty equipments. Section 46, which allows ordinary citizens to file claims for damages, is seen by the US nuclear industry as exposing its companies to unlimited liability in the event of an accident. Washington's second objection is to Section 17(b), which grants Indian operators a right of recourse against nuclear suppliers if an accident results from the "supply of equipment or material with patent or latent defects or sub-standard services." It allows for the supplier to be penalised if he had accepted liability in a written contract and limit their exposure in the event of faulty equipment to accidents which occur in the first five years of the reactor's operation.⁷ India is unwilling to implement the deal without the safety factors in the liability bill. However, the Attorney General of India, Goolam Essaji Vahanvati recently stated that it is for the operator of a nuclear plant in India to decide whether it wished to exercise the 'right of recourse' provided to it under Section 17 of the Civil Liability for Nuclear Damage Act. The Attorney Generals' opinion effectively paves the way for NPCIL, which will operate any nuclear plant using

imported reactors, to repudiate a right that Parliament explicitly wrote into Section 17(b) of the law to ensure that foreign suppliers are made liable if a nuclear accident is traced back to “equipment or material with patent or latent defects or substandard services.”⁸ His views were expressed in an opinion to the Department of Atomic Energy query seeking clarity on the law. It is likely that the Attorney General’s view would be challenged by the opposition parties in the Parliament.

The US has to understand that the liability bill has emerged as a result of India’s democratic processes and also, to a large extent, the changed perceptions of the safety of nuclear energy after the Fukushima accident in Japan. Around the time the liability bill was being debated in the Lok Sabha, the decision on the Bhopal gas tragedy was released. Almost 30 years later, the victims of this infamous industrial tragedy still suffer greatly due to lack of proper compensation and medical rehabilitation. The timing of the decision brought the disaster into the forefront of the Indian public’s mind and arguably bolstered the push for strong supplier’s liability.

Given India’s past experience of sanctions, there have been questions raised on the reliability of the US to be a supplier of raw material and technology. India has on its own accord halted but not renounced its rights to test nuclear weapons in the future. Prime Minister Manmohan Singh in his statement to the Parliament on August 13, 2007 made it clear that, “The agreement does not in any way affect India’s rights to undertake future nuclear tests, if it is necessary in India’s national interest.”⁹ There is nothing in the agreement that legally curtails India from testing a device. According to the agreement, it can be terminated by either party for any reason with a one year notice. It does not specifically mention nuclear testing, but the parties agreed to consider whether the triggers for cessation stem from a changed security environment or similar action by other states (i.e. a nuclear test by Pakistan). The agreement provides the US support for an Indian effort to develop a strategic reserve of nuclear fuel in order to guard against any disruption of supply for the lifetime of India’s reactors. However, it is too early to predict the US behaviour in the event of nuclear testing by India. Given India’s deepening nuclear ties with other countries, there is a possibility that US actions would have a modest impact. The other factor that has to be kept in mind is the strength of India and US relations. Sanctions were imposed on India during the Cold War, when geopolitical and geostrategic needs of both countries were different; today, however, they face an entirely different international environment. There is a strong possibility that, given the

depth of the relationship, the US may have limited options in the event of a nuclear test by India.

The agreement was a step in the assimilation of India into the international nuclear trade and technology regimes as also a step to leverage economic, strategic and political dividends for the country. For the US, the agreement had similar benefits. However, it is too soon to expect that it would be able to change all dimensions of the India-US relationship.

**Dr. Stuti Banerjee is a Research Fellow at the Indian Council of World Affairs, New Delhi.*

Endnotes

¹ Ronak D. Desai, “US-India Relations Under the Second Obama Administration”, Accessed on August 13, 2013, URL- http://www.huffingtonpost.com/ronak-d-desai/usindia-relations-under-t_b_2115396.html

² The Economic Times, “Manmohan's US visit to be 'very substantive': Shivshankar Menon, NSA”, The Economic Times, August 21, 2013, Accessed on August 27, 2013, URL- http://articles.economictimes.indiatimes.com/2013-08-21/news/41433404_1_nuclear-plant-shivshankar-menon-susan-rice

³ The text of the agreement is available at URL- http://responsiblenucleartrade.com/keydocuments/india_123_agreement_text.pdf.

⁴ The Joint Statement by President G H Bush and Prime Minister Singh is available at URL- <http://georgewbush-whitehouse.archives.gov/news/releases/2005/07/20050718-6.html>.

⁵ Mark Hibbes, “Moving Ahead on the US-India Nuclear Deal”, Carnegie Endowment for International Peace, Accessed on August 27, 2013, URL- <http://carnegieendowment.org/2010/04/05/moving-forward-on-u.s.-india-nuclear-deal/25yl>

⁶ The text of the Bill and all relevant related documents are available at URL- <http://www.prsindia.org/billtrack/the-civil-liability-for-nuclear-damage-bill-2010-1042/>.

⁷ ----, “New Rules give some Relief to Suppliers”, The Hindu, Nov. 16 2011, Accessed on August 27, 2013, URL- <http://www.thehindu.com/news/national/new-rules-give-some-relief-to-nuclear-suppliers/article2633545.ece>

⁸ Sandeep Dikshit and J. Venkatesan, “Manmohan may carry nuclear liability dilution as gift for U.S. companies”, The Hindu, Sept. 19, 2013, Accessed on Sept. 19, 2013, URL-<http://www.thehindu.com/news/national/manmohan-may-carry-nuclear-liability-dilution-as-gift-for-us-companies/article5142882.ece?homepage=true>

⁹ Prime Minister of India, Government of India “Speech-PM's statement in the Lok Sabha on Civil Nuclear Energy Cooperation with the United States, August 13, 2007”, Accessed on September 18, 2013, URL- <http://pmindia.nic.in/speech-details.php?nodeid=550>