

# LEFT STAND ON THE NUCLEAR DEAL

Notes Exchanged in the  
UPA-Left Committee on  
India-US Civil Nuclear  
Cooperation

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on India-US Civil Nuclear Cooperation*

COMMUNIST PARTY OF INDIA (MARXIST)

COMMUNIST PARTY OF INDIA

REVOLUTIONARY SOCIALIST PARTY

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# Introduction

The UPA-Left Committee on the Indo-US nuclear deal was set up after the Left Parties came out in opposition to the 123 Agreement signed with the United States of America in end July 2007.

The Left Parties, after studying the text of the 123 bilateral agreement came out with their stand on August 7, 2007. The statement is reproduced in this publication.

Subsequently, the UPA and the Left Parties decided that a committee be set up to go into the objections raised by the Left Parties. The Committee was asked to:

look into certain aspects of the bilateral agreement; the implications of the Hyde Act on the 123 Agreement and self-reliance in the nuclear sector; the implications of the nuclear agreement on foreign policy and security cooperation.

The UPA-Left Committee held nine meetings over the period September 2007 to June 2008. The Left Parties submitted six Notes and rejoinders on the issues examined by the Committee. The UPA submitted five Notes in response and counter response.

The subjects discussed in the Committee and the notes exchanged went into the details of the provisions of the Hyde Act, its bearing on the 123 Agreement, the implications of the nuclear agreement on India's foreign policy and security cooperation.

The Left Parties submitted the following Notes in chronological order:

1. Implications of the Hyde Act for the 123 Agreement, and on Self-Reliance in the Nuclear Sector – September

## Left-UPA Notes on Indo-US Nuclear Deal

14, 2007.

2. Rejoinder to UPA's Note – September 19, 2007.

3. Indo-US Nuclear Cooperation Agreement: Implications For India's Foreign Policy & Security Matters – October 2, 2007.

4. A Rebuttal to the UPA's Response dated 24<sup>th</sup> September – October 5, 2007.

5. Rejoinder to the UPA's Response of 8th October – October 20, 2007.

6. Rejoinder to UPA's Response on Foreign Policy and Security Matters – October 20, 2007.

The UPA on its part submitted five Notes.

1. Response to Left Parties' Note of 14, September 2007 on Implications of the Hyde Act for the 123 Agreement and Self Reliance in the Nuclear Sector – September 17, 2007.

2. Responses to the Assertions in the Left Parties' Rejoinder of 19 September 2007 to the UPA's Note – September 24, 2007.

3. Response to Left Parties Note of 2<sup>nd</sup> October 2007 on Indo-US Nuclear Cooperation Agreement: Implications for India's Foreign Policy and Security Matters – October 5, 2007.

4. Response to Left Parties' Rebuttal dated October 5, 2007 – October 8, 2007.

5. Issue-wise Response to Rejoinder by Left Parties dated 22 October, 2007 – November 16, 2007.

These notes and rejoinders will show that the Left has raised substantive and highly relevant questions regarding how the provisions of the Hyde Act are contrary to the assurances given by the Prime Minister in his statement to Parliament in August 2007. They show how the Hyde Act has substantial bearing on the provisions of the 123 bilateral Agreement which was subsequently negotiated. The Left

documents show how the 123 Agreement does not ensure full civilian nuclear cooperation, or provide for guaranteed fuel supply assurances or lift the technology denial regime. In subsequent rejoinders, the Left Parties have countered the arguments set out by the UPA in all these areas.

Another set of issues concerns the energy dimension. The Left documents effectively debunk the notion that nuclear energy can be central to our energy security. They point out that at best it can meet 7 per cent of the total energy requirements, if 20,000 MW capacity for nuclear power generation is reached in the next two decades.

Calculations show that the cost of power from imported reactors will range from Rs. 4.60 to Rs. 5 per unit while power from coal-fired units will range from Rs. 2.20 to Rs. 2.60 per unit.

In the discussions on foreign policy and security matters, the Left has exposed the vital area of extraneous “non-nuclear” conditions inherent in the nuclear deal. The 40-year civilian nuclear agreement will put severe constraints on our independent foreign policy given the approach of the United States as reflected in the Hyde Act and the 123 Agreement. India is sought to be bound to the United States’ strategic designs through the nuclear deal.

An immediate fall-out is that the Iran-Pakistan-India gas pipeline, which is so vital to India’s energy needs, has been delayed on one pretext or the other.

The Left presented a Note on the growing military collaboration and security nexus as set out in the Defence Framework Agreement signed in June 2005 preceding the nuclear deal. Its implications for India’s strategic autonomy are fully brought out. Among the dangerous provisions are steps towards increasing inter-operability of the US and Indian armed forces, joint naval patrols, Indian participation in the US Proliferation Security Initiative and a Logistics Support Agreement which will provide the US servicing and maintenance facilities in Indian ports and air bases.

In its November 16 meeting, the UPA-Left Committee



included one more issue for discussion. It was decided that the government should go to the Secretariat of the International Atomic Energy Agency for negotiations on the draft of a Safeguards Agreement. It was agreed that: “The Government will proceed with the talks and the outcome will be presented to the Committee for its consideration before it finalises its findings. The findings of the Committee will be taken into account before the operationalisation of the India-US Civil Nuclear Cooperation Agreement”.

In March 2008 at the seventh meeting of the Committee the outcome of the talks was reported but the UPA did not provide a copy of the text of the IAEA Safeguards Agreement. A brief Note on its salient features was presented for reading and taken back. The Left Parties submitted two Notes asking for clarifications and further information. Since the UPA’s Notes on the IAEA Safeguards Agreement were circulated and taken back, they are not available for publication here. Therefore only the two Notes submitted by the Left on this subject are being published.

The Left Parties believe that the entire material placed before the UPA-Left Committee on the nuclear deal should be made public since the Indo-US nuclear deal is of vital importance and will have long term implications for the country. The struggle waged by all patriotic and democratic forces against the deal finds reflection in the document submitted by the Left Parties. They are an effective and comprehensive critique of the deal and its harmful consequences for India’s national interests, foreign policy and strategic autonomy.

## **Left Parties**

# **Statement on the Indo-US Bilateral Nuclear Cooperation Agreement**

**August 7, 2007**

The Left Parties have consistently held that the nuclear cooperation agreement should not be seen in isolation from the overall strategic tie up with the United States. The nuclear cooperation deal is an integral part of the July 2005 joint statement, which has political, economic and strategic aspects. It is also closely linked to the June 2005 military framework agreement signed with the United States.

It is therefore not possible to view the text of the bilateral “123” agreement negotiated with the United States as a separate and compartmentalized entity without considering its implications for India’s independent foreign policy, strategic autonomy and the repercussions of the US quest to make India its reliable ally in Asia. Following from the July 2005 Joint Statement, many steps have been taken to entangle India into a complex web of political, economic and military relationships as part of the “strategic partnership”. The talk of the two democracies working together on a global scale, the growing influence of US-India forums on economics and commerce and the increasing military collaboration seen through the negotiations for the Logistics Support Agreement, the steadily escalating joint exercises and the inevitable demand that India purchase expensive weaponry from the United States, are all evidence of this trend.

## Left Parties' Statement

Even now, the briefing by the US spokesman on the bilateral nuclear agreement emphasises the cooperation India extended in efforts to isolate Iran by voting twice against it in the IAEA and the clear expectation that it will continue to extend this “cooperation”.

Such an expectation is in line with the provisions of the Hyde Act, which looms in the background. The bilateral agreement cannot be seen outside the context of the Hyde Act. However much the two sides have sought by skillful drafting to avoid the implications of the Hyde Act, it is a “national law” which is there, at present, and will be there, in the future. The agreement which binds India into clauses of perpetuity and which legitimises the US abiding by its “national laws” is something which should be seen objectively for its serious implications.

Serious concern had been expressed by the Left Parties about various conditions inserted into the Hyde Act passed by the US Congress. A number of them pertain to areas outside nuclear co-operation and are attempts to coerce India to accept the strategic goals of the United States. These issues are:

Annual certification and reporting to the US Congress by the President on a variety of foreign policy issues such as India's foreign policy being “congruent to that of the United States” and more specifically India joining US efforts in isolating and even sanctioning Iran [Section 104g(2) E(i)]

Indian participation and formal declaration of support for the US' highly controversial Proliferation Security Initiative including the illegal policy of interdiction of vessels in international waters [Section 104g(2) K]

India conforming to various bilateral/multilateral agreements to which India is not currently a signatory such as the US' Missile Technology Control Regime

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(MTCR), the Australia Group etc [Section 104c E,F,G]

All of these are a part of the Hyde Act. The 123 Agreement refers only to the narrow question of supply of nuclear materials and co-operation on nuclear matters. The provisions of the Hyde Act are far wider than the 123 Agreement and could be used to terminate the 123 Agreement not only in the eventuality of a nuclear test but also for India not conforming to the US foreign policy.

The termination clause is wide ranging and does not limit itself only to violation of the Agreement as a basis for cessation or termination of the contract. Therefore, these extraneous provisions of the Hyde Act could be used in the future to terminate the 123 Agreement. In such an eventuality, India would be back to complete nuclear isolation, having accepted IAEA safeguards in perpetuity. Therefore, the argument that provisions of the Hyde Act do not matter and only 123 clauses do, are misplaced.

The Left Parties have well-known views against nuclear testing for weaponisation, but that does not mean acceptance of any US imposed curbs on India's sovereign right to exercise that choice. The direction in the Hyde Act with regard to the Fissile Material Cut-off Treaty (FMCT) is unacceptable.

An important aspect of the Indo-US nuclear cooperation is the relegation of India's traditional commitment to universal nuclear disarmament. By getting accommodated in a US led unequal global nuclear order, India's leading role in advocating nuclear disarmament as a major country of the non-aligned community is being given the go-by.

While the 123 Agreement is being presented as a victory for India and conforming to the Prime Minister's assurances in the Parliament, we find that there are a number of issues on which it falls short of what the Prime Minister had assured the Parliament. While the Indian commitments are binding and in perpetuity, some of the commitments that the US has made are either quite ambiguous or are ones that can be terminated at a future date.

## Left Parties' Statement

Under the terms set by the Hyde Act, it was clear that one of the key assurances given by the Prime Minister to Parliament on August 17, 2006 – that Indo-US nuclear co-operation would cover the entire nuclear fuel cycle – would be violated. The proposed 123 Agreement while superficially using the original wording of the Joint Statement of 2005, “full civilian nuclear co-operation”, denies co-operation or access in any form whatsoever to fuel enrichment, reprocessing and heavy water production technologies. The statement of intent in the Agreement that a suitable amendment to enable this access may be considered in the future has little or no operative value.

Further, this denial (made explicit in Art 5.2 of the proposed agreement) also extends to transfers of dual-use items that could be used in enrichment, reprocessing or heavy water production facilities, again a stipulation of the Hyde Act. Under these terms, a wide range of sanctions on a host of technologies would continue, falling well short of “full civilian nuclear co-operation”.

It is also important to recognise that the fast breeder reactors under this agreement would be treated as a part of the fuel cycle and any technology required for this would also come under the dual use technology sanctions. This would be true even if future fast breeder reactors were put in the civilian sector and under safeguards. Thus, India's attempt to build a three-phase, self-reliant nuclear power programme powered ultimately by thorium would have to be developed under conditions of isolation and existing technology sanctions.

It might be noted that dual-use technologies pertain to a wide variety of items, which are used well beyond the nuclear sector and by this clause the US has effectively armed itself with a lever for imposing sanctions on a wide range of Indian activities. Even in the new facilities built for reprocessing the spent fuel under safeguards, the onerous technological sanctions implied by the “dual-use” label will apply. This is certainly a major departure from what the Prime Minister

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had assured the House, namely that this deal recognises India as an advanced nuclear power and will allow access to full civilian technologies.

Another key assurance that had been given by the Prime Minister was that India would accept safeguards in perpetuity only in exchange for the guarantee of uninterrupted fuel supply. While the acceptance on India's part of safeguards in perpetuity has been spelt out, the linkage of such safeguards with fuel supply in perpetuity remains unclear. The assurance that the United States would enable India to build a strategic fuel reserve to guard against disruption of supplies for a duration covering the lifetime of the nuclear reactors in operation appears to have been accepted in the agreement. The agreement also assures that in the event of termination of co-operation with the United States, compensation would be paid for the return of nuclear materials and related equipment. This will be small comfort for the damage caused.

However, whether the fuel supply will continue even after cessation or termination of the agreement depends solely on the US Congress. The Hyde Act explicitly states that the US will work with other Nuclear Suppliers Group (NSG) countries to stop all fuel and other supplies to India if the agreement is terminated under US laws. Since this Agreement explicitly gives the domestic laws the over-riding power, it appears that fuel supply from the US will not only cease in case the US decides to terminate the Agreement but they are also required under the Hyde Act to work with Nuclear Suppliers Group (NSG) to bar all future supplies. Clause 5.6 on disruption of supplies therefore seems to be limited to "market failures" and not to cover a disruption that takes place under the clauses of the Hyde Act. In such an eventuality, the US will have to pay compensation to India but all future fuel supplies would stop. Therefore, the 123 Agreement represents the acceptance of IAEA safeguards in perpetuity for uncertain fuel supplies and continuing nuclear isolation with respect to a substantial amount of technological know-how.

## Left Parties' Statement

It is clear that the UPA government looks forward to an agreement with the NSG that would be more wide-ranging than the 123 Agreement allowing for access to enrichment and reprocessing technologies, support for building a strategic reserve and provision of nuclear fuel in case of disruption of US supplies or termination or cessation of the 123 Agreement. In the likely event that the NSG does not oblige, the terms of the 123 Agreement would impact even more negatively than they appear now. The same consideration applies to any agreement that would be made with the IAEA.

The Prime Minister assured the Parliament that all steps would be taken by India reciprocally with steps by the US. The Agreement ties India into long-term virtually irreversible changes in its nuclear institutional structures and arrangements. It is crucial to ensure that India is fully satisfied on all aspects of the agreement as also other strategic and foreign policy concerns before it actually implements its separation plan and placing of its civilian facilities under permanent IAEA safeguards. Not only the provisions of the Agreement but also the sequencing of actions is therefore of vital importance.

The flawed nuclear cooperation agreement cannot be justified on the debatable basis of augmenting our energy resources, or achieving energy security. The motivation for the US side is commercial gains which will accrue for its corporates running into billions of dollars.

The bilateral nuclear agreement must be seen as a crucial step to lock in India into US global strategic designs. Alongside negotiations for the nuclear accord, steps have been taken for closer military collaboration. The Access and Cross Servicing Agreement, otherwise known as the Logistics Support Agreement is being pushed ahead as provided for in the Defence Framework Agreement. This would lead to regular port calls by US naval ships in Indian ports for fueling, maintenance and repairs. The regular joint naval exercises have now been widened to include India in the trilateral security cooperation which exists between the US, Japan and

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Australia. The September joint naval exercises in the Bay of Bengal are a major step in this direction. The United States is exerting pressure on India to buy a whole range of weaponry such as fighter planes, helicopters, radars and artillery involving multi-billion dollar contracts. The aim is to ensure “inter-operability” of the two armed forces.

The Left Parties had earlier cautioned the government not to accept nuclear cooperation with United States on terms that compromises India’s independent foreign policy and its sovereign rights for developing a self-reliant nuclear programme. It had asked the UPA government to desist from proceeding with the negotiations for the 123 Agreement till the inimical provisions of the Hyde Act are cleared out of the way.

The Left Parties, after a careful assessment of the text of the 123 Agreement and studying it in the context of the burgeoning strategic alliance with the United States, are unable to accept the Agreement. The Left calls upon the government not to proceed further with the operationalising of the agreement. There has to be a review of the strategic aspects of Indo-US relations in Parliament. The Left Parties will press for a Constitutional amendment for bringing international treaties and certain bilateral agreements for approval in parliament.

(PRAKASH KARAT)

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(ABANI ROY)

REVOLUTIONARY SOCIALIST PARTY





**Implications of the Hyde Act  
for the 123 Agreement and  
for Self-Reliance in the  
Nuclear Sector**



**Left Parties**

# **Implications of the Hyde Act for the 123 Agreement and for Self-Reliance in the Nuclear Sector**

**September 14, 2007**

## **THE IMPACT OF US NATIONAL LAWS ON THE 123 AGREEMENT**

Article 2.1 of the 123 Agreement states that “Each Party shall implement this Agreement in accordance with its respective applicable treaties, national laws, regulations, and licence requirements concerning the use of nuclear energy for peaceful purposes”. This clearly means the following:

- That all relevant yet unspecified internal US laws such as the Hyde Act and the US Atomic Energy Act 1954 will directly impinge on the nuclear deal.
- That any legislation adopted in future by the US Congress will also apply.
- That the 123 Agreement is not a stand-alone Agreement but is circumscribed by various applicable US laws.
- That the 123 Agreement therefore does not give India any protection under international laws.

The China-US 123 accord states: “the parties recognize, with respect to the observance of this agreement, the principle

## Left Parties on Implications of Hyde Act

of international law that provides that a party may not invoke the provisions of its internal law as jurisdiction for its failure to perform a treaty”. Similarly, the Japan-US 123 Agreement (Article-14) states: “...If any dispute arising out of the interpretation or application of this agreement is not settled by negotiation, mediation, conciliation, or other similar procedure, the parties may agree to submit such dispute to an arbitral tribunal which shall be composed of three arbitrators appointed in accordance with the provisions of this paragraph”. In contrast, the Indo-US 123 Agreement has a single-sentence Settlement of Disputes (Article 15), which merely says, “Any dispute concerning the interpretation or implementation of the provisions of this agreement shall be promptly negotiated by the Parties with a view to resolving that dispute”.

The Government may clarify why could we not have obtained a more meaningful “Settlement of Dispute” clause akin to what China and Japan appear to have obtained in their 123 Agreements, to preserve their long-term national interest?

Section 2.1 also refers to respective applicable treaties. Has the Government identified the treaties being referred to and does it also mean discriminatory international treaties to which the US is signatory but India is not? This is important, as the 123 Agreement nowhere lists either the applicable domestic laws or international treaties, leaving considerable room for later disagreement.

### FUEL SUPPLY ASSURANCES

Section 103(b)(10) of the Hyde Act limits the fuel reserve to be provided to India at anytime to that which is “commensurate with reasonable operating requirements.” Article 5.6 of the 123 Agreement has been cited as an ostensible concession to India’s demand for assured lifetime fuel supply. However, Article 5.6(a) appears to be *only a US commitment to seeking agreement from the US Congress to amend its domestic laws* rather than an outright assurance,

and all options that follow in Article 5.6(b) are, therefore, *contingent upon such future amendments*. The following issues arise:

- Even if the 123 Agreement is approved by the US Congress, the situation will stay the same as stipulated in the Hyde Act whose Sections 104(g)(2)(F)(iii), 102(13), 103(a)(4) and 103(a)(6) limit nuclear fuel and other exports directly by the US and even any role that may be played by the US in respect to such exports by other countries.
- Necessary amendments to the Hyde Act too would, therefore, have to be enacted.

#### IAEA SAFEGUARDS AND ADDITIONAL PROTOCOL

The Hyde Act 2006, through its Section 104(b)(2), requires India and the IAEA *to conclude all legal steps required prior to signature* by the parties of an agreement requiring the application of IAEA safeguards *in perpetuity* and make substantial progress towards concluding an Additional Protocol with the IAEA, applicable to India's civilian nuclear programme. The PM stated in Parliament on August 17, 2006 that "...it is worth emphasizing that the March 2006 Separation Plan provides for an *India Specific Safeguards Agreement* with the IAEA, with assurances of uninterrupted supply of fuel to reactors that would be placed under IAEA safeguards together with India's right to take *corrective measures* in the event fuel supplies are interrupted." The following issues arise:

- Since various reactors would be placed under safeguards "in perpetuity", what corrective measures are visualised to *ensure uninterrupted operation* of the civilian nuclear reactors in the event of disruption of foreign fuel supplies?
- What "India-specific" safeguards are envisaged over and above IAEA's INFCIRC-66 (Rev.2) referred to?

## Left Parties on Implications of Hyde Act

- Has the Government examined the implications of the IAEA Additional Protocol and its intrusive pursuit clauses?

### SEPARATION PLAN OF MARCH 02, 2006

The Separation Plan has been tabled in Parliament and forms an important part of the nuclear deal, such as the approach and guiding principles which India follows in choosing facilities to be put in the civil list, the specific facilities agreed to be placed initially as civil entities, the assertion that India retains the sole right to determine which reactors will be designated as civilian in the future, etc. However, while the Hyde Act refers to the Indian Separation Plan, this finds no mention in the 123 Agreement except that Section 15 of the Separation Plan on Safeguards has been copied as Article 5.6 in the 123 Agreement without citing its origin. What are the implications of this omission from the 123 Agreement, particularly as regards any future designation by India of facilities in the civilian list or otherwise?

### FULL NUCLEAR COOPERATION

On 17-8-2006, Prime Minister assured the Parliament, “The objective of full civil nuclear cooperation is enshrined in the July Statement. This objective can be realized when current restrictions on nuclear trade with India are fully lifted... Only such cooperation would be in keeping with the July Joint Statement”. Clearly, government has not succeeded in living up to this promise.

Sections 104(d)(4)(A)(i) and 104(d)(4)(B) of the Hyde Act together deny the export of any equipment, components or materials related to uranium enrichment, spent-fuel reprocessing or heavy water production to India, unless it is for a multilaterally managed facility to be located in India. Section 103(a)(5) of the Act states that the US policy will be to work with other NSG members to further restrict transfers of such equipment and technologies to countries, including India. Article 5.2 of the 123 Agreement states such items may

September 14, 2007

be transferred to India pursuant to an amendment to this Agreement, which appears highly unlikely.

While technologies, equipments and components for reprocessing plants are denied to India, India has agreed under the 123 Agreement to build a new reprocessing plant, solely to handle spent-fuel from imported reactors. Has the Government examined the implications of building a new reprocessing plant under technology sanctions, and then putting it under IAEA safeguards and Additional Protocols?

ANNUAL CERTIFICATION/ASSESSMENT BY THE US  
PRESIDENT

Regarding annual certification of India by the US President to the US Congress, the Prime Minister told Parliament on 17-8-2006 that, “. . . [US legislation] requires the US President to make an annual report to the Congress that includes certification that India is in full compliance of its non proliferation and other commitments. We have made it clear to the United States our opposition to these provisions, even if they are projected as non-binding on India, as being contrary to the letter and spirit of the July Statement. We have told the US Administration that the effect of such certification will be to diminish a permanent waiver authority into an annual one. We have also indicated that this would introduce an element of uncertainty regarding future cooperation and *is not acceptable to us.*”

Notwithstanding the PM's assertion, the US Congress has required in Section 104(g)(2) of the Hyde Act that annually the US President shall submit to the appropriate Congressional committees a report which includes a large number of evaluators of India's non-proliferation performance and the extent of cooperation we are extending to the US on various issues. Among other items, the US President is to annually furnish data on such uranium used in production of weapons, the rate of production in India of fissile materials for weapons and the number of nuclear explosive devices made.

The information on India's strategic programmes,



## Left Parties on Implications of Hyde Act

materials and data to be collected by the US administration and presented every year to the US Congress is cause for serious concern. Does the government intend to furnish to the US President this sensitive data? If not, is the government aware through what means the US administration plans to gather such information? And how has converting a permanent waiver authority into an annual one now become acceptable?

It has been argued that President Bush, while signing the Hyde Act into law, has noted that Section 103 on Statement of Policy is not binding and that he would treat the relevant clause as advisory, presumably also impinging on reporting on such policies as required under Section 104. However, President Bush's declaration of a large number of different clauses in various legislations passed by the US Congress as "advisory" has been highly controversial. Future US Presidents may not interpret the Hyde Act in this manner. Can we bind the country for 40 years based on the interpretation of the present President?

### CONSENT TO REPROCESS SPENT-FUEL OF US ORIGIN

Article 6(iii) of the 123 Agreement indicates the grant of consent to reprocess spent-fuel of US origin. The procedures involved and the associated time-scale for getting full consent are not clear in the Agreement. There is a requirement that India must build a new, dedicated reprocessing plant for this purpose, without the benefit of any import of technology, equipment or components for this plant, which nevertheless will come under IAEA safeguards and Additional Protocol. US and India are to agree on arrangements and procedures under which reprocessing can take place in this facility. Consultations to finalize these procedures and arrangements are to be finished in one year. There is no indication as to when the actual clearance for reprocessing can be expected. There does not seem to be either an "up-front" consent for reprocessing or a guaranteed time frame in the 123 Agreement.

Government may clarify the time and financial expen-

diture it will take to build this new reprocessing facility. From the end of the year when the procedures and arrangements are finalized, how much longer will it take for the US to grant the one-time permanent consent to reprocess all US-origin spent fuel? Will the consent to reprocess US-origin spent-fuel indicated in this Agreement also include permission to reprocess the accumulated spent-fuel from Tarapur 1&2 plants of US supply?

#### ENERGY ISSUES

The issues that need to be addressed for working out our energy options are the following:

- Cost of imported reactors vis-à-vis domestic reactors.
- Cost of imported and domestic nuclear energy versus other sources of energy.
- An assessment of what is an appropriate energy mix taking into account domestic coal, hydro and recently discovered gas resources.

For the purpose of estimating future demand, we are tabulating below the Planning Commission’s estimates for 2016-17, 2021-22 and 2031-32.

#### Projections for Electricity Requirement with 8% GDP Growth

	2006-07	2016-17	2021-22	2031-32
Installed MW	153,000	306,000	425,000	778,000

Source: *Integrated Energy Policy*, Planning Commission, Table 2.5

The Integrated Energy Policy had estimated (Page 22) that in one scenario, it would mean reaching 150,000 MW hydro and 63,000 MW nuclear by 2031-32. It had also indicated that this was the outside limit of what could be achieved for hydro and nuclear and stated, “These scenario assumptions in respect of hydro and nuclear may not be fully realised and are made here in order to characterise the

boundaries of alternative choices.” The document also gives the figures for 2020 for nuclear as 29,000 MW as the optimistic scenario (Table 3.4, Page 37). With the above, it is difficult to understand the Government’s sudden estimate of needing to reach 40,000 MW nuclear power by 2021. These figures do not seem to have come out of any study done by either the Planning Commission or any other agency. So we would like to know on what basis has the Government identified that it needs to reach 40,000 MW by 2021-22 and therefore its need to import a large number of reactors for this purpose?

By all accounts, imported nuclear plants are the most expensive in terms of capital costs per MW. Therefore, any programme using imported reactors in large numbers would involve much larger outlays in capital terms than any other source. Has the Government done any exercise towards a perspective plan for the energy sector (apart from the Integrated Energy Policy already mentioned above), which factors in the high cost of capital and its implications for the Indian economy? How does the Government propose to raise this high amount of capital? It may be noted that the World Bank does not give any loans for nuclear power due to high cost and therefore, India will have to raise commercial loans in the international debt market for this purpose. Has any exercise been done in this regard? Has the Government done any study to see how it proposes to raise loans for the debt portion of these projects?

The Government has talked of a nuclear renaissance. Has the Government done a study regarding this “renaissance”? From all accounts, the situation regarding the nuclear industry has not materially changed internationally. Amongst the developed countries, the US, Germany, Italy, the UK, Sweden, etc., are all not building new plants or proposing to phase out their existing nuclear plants. The only exceptions are France and Japan. Even here, there is a slow down in investing in new plants. The main reasons given for moving away from nuclear plants is the high cost of nuclear power

in spite of certain Governmental subsidies in terms of insurance and waste disposal. Has the Government done an exercise to evaluate the state of the nuclear industry in developed countries to support its claim of a nuclear renaissance?

#### IMPACT OF IMPORTED REACTORS ON DOMESTIC INDUSTRY

The Indian civilian nuclear energy programme has suffered immensely from the nuclear embargo imposed on it by the US and other countries in the nuclear cartel. It is only after we have now successfully built our version of the Pressurized Heavy Water Reactors (PHWRs), scaled it up to 540 MW, have successfully commissioned the experimental fast breeder facility at Kalapakkam, that we now see the US offering to lift these sanctions and supply nuclear reactors. Of course, importing these reactors would also mean making the nuclear energy programme dependent on imported uranium fuel and therefore be open again to future blackmail of the nuclear cartel. Therefore, importing a large number of reactors is not only a high cost option, but will also make our nuclear energy programme far more dependent on the Nuclear Suppliers Group. Why is then the Government thinking of importing Light Water Reactors (LWRs) from the international market? Has it done any study to evaluate the possible technology options, their costs, the impact on energy security and the ability of the manufacturers to meet the target that is being projected by the Indian Government?

#### COST OF ELECTRICITY FROM DIFFERENT SOURCES

When we look at the energy costs from nuclear power plants – the new Tarapur units or Kaiga for example – the cost per unit of nuclear power is relatively much higher than coal, gas or hydro plants of equivalent vintage. Has the Government done any analysis of the per unit cost of nuclear energy? Has the DAE/NPC evolved norms for nuclear power and made this available for public scrutiny?

While nuclear energy using domestic PHWRs appears

to be more expensive than coal-fired plants, the picture is much worse for imported reactors. As the major cost of nuclear energy is due to the capital servicing cost, obviously higher the capital cost, higher is the cost of energy derived from such plants. As the imported nuclear reactors based on independent international studies (not those made by nuclear associations and manufacturers) cost at least \$2,000/kW. This translates to about Rs. 9 crore per MW as against Rs. 6.2 crore per MW for domestic reactors. Given this, it is clear that nuclear energy using imported reactors would be much more expensive than any other option. For instance, the cost of power from imported reactors will be at least twice that of equivalent coal-fired plants. So why is the Government choosing this option? Even if it wants to put in substantial amounts in nuclear energy, why is it opting for the high cost imported reactor route?

#### SHORTAGE OF INDIGENOUS URANIUM SUPPLIES

Since the days of Homi Bhabha, India had planned its nuclear energy programme taking into account that uranium is not available in the country in abundance and can support only around 10,000 MW. The three-phase plan was therefore to build PHWRs to use natural uranium and convert it to plutonium, which could be used in the fast breeder reactors. In the second phase, the fast breeders would use this plutonium to produce much more energy than possible with just PHWRs. BARC had stated that the fast breeder route would allow the same amount of uranium to support 350,000 MW nuclear energy programme. In the third phase, thorium, of which we have 25-30 per cent of world's reserves, would be used for producing energy, thus making our indigenous resources virtually unlimited. This plan was to ensure India's energy security and insulating India from the vagaries of the international uranium market, which has a strong cartel. It was for this reason that we have gone slowly on nuclear power so that the fast breeder programme is commercially available before we make the big push.

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India has uranium ores in its soil to sustain a total PHWR capacity of 10,000 MWe. We have so far installed only 4100 MWe of PHWRs, but already the uranium supplies are critically low and is well below the current demand. The PHWRs, which were operating some six years ago at a healthy plant capacity factor close to 90 per cent, are today edging close to a 45 per cent capacity factor, merely due to shortage of natural uranium. In a country where enough uranium ore is present underground, this is inexcusable. No explanation has been given officially of how this has come about. At the same time, it appears that using the poor performance and slow growth of the PHWR programme as an excuse, the government is pushing for the import of much costlier foreign reactors through the Indo-US nuclear deal as a substitute to the indigenous PHWRs. The attempt seems to be only to highlight the need for uranium imports and therefore justify the Indo-US deal.

The current uranium shortage over the last ten years has occurred due to allocation of insufficient funds to the uranium-mining sector since 1990. The Government failed to address the grievances of the local community regarding the mining. The shortage of natural uranium alone is considerably slowing down the indigenous three-stage nuclear power programme, while creating a false impression that the PHWR programme under the first stage is failing to produce desired results due to technical deficiencies.

Government may clarify what it is doing to address the gap between demand for uranium and supply. Has the government fixed the responsibility for this serious deficiency? How long will it take before the plant capacity factors of current PHWRs start coming up and reaching close to 90 per cent once again? Abandoning the indigenous route for imported supplies seems to be throwing the baby out with the bath water.

#### TECHNOLOGY SANCTIONS AND THEIR IMPLICATIONS

One of the consequences of the Hyde Act is now clear.

## Left Parties on Implications of Hyde Act

The technology for the fuel cycle as well as all dual use technology is outside the scope of this agreement. In other words, we can import reactors and uranium fuel so that we become dependent, but cannot access technology from the international market which will truly foster self-reliance. Not only would large parts of the existing technology sanctions stay, we are also proposing to put ourselves in a double bind. We will open our new reprocessing facility and the future breeder programme to IAEA inspection, without securing any relaxation of the technology sanctions regime for these facilities and plants. Has the Government done any exercise to analyse the implications of this?

**UPA**

# **Response to Left Parties' Note of September 14**

**September 17, 2007**

## **1. THE IMPACT OF US NATIONAL LAWS ON THE AGREEMENT**

It is a normal and accepted practice that implementation of an International Agreement requires a domestic legal framework.

The internal US law, which has relevance to the signing of the 123 Nuclear Cooperation Agreement with India, is the US Atomic Energy Act. It has already been amended by the enactment of the Hyde Act, which provides permanent waiver to certain restrictions of section 123 of the US Atomic Energy Act read with sections 128 and 129. These are (i) subsection a (2) of Section 123 of the Atomic Energy Act of 1954 (Atomic Energy Act 123 (a) (2): a requirement of full scope safeguards (ii) application of section 128 of the Atomic Energy Act of 1954 with respect to exports to India; and (iii) application of Section 129 a (1) (D) of the Atomic Energy Act of 1954 (exemption from the stipulated that the intended partner for cooperation should not have detonated).

The US Congress passed the Hyde Act in December 2006. This is an enabling legislation which is applicable only to US Administration.

The core of this legislation is that it gives a permanent waiver in respect of the above provisions of the US Atomic Energy Act and there is implicit recognition of India's status as a Nuclear Weapons State. We are in a unique position. We



have the benefit of civil nuclear cooperation with the USA and the rest of the world being opened to us while, at the same time, we are in a position to continue with our independent strategic nuclear programme, our autonomous three – stage indigenous nuclear programme and our independent research and development.

*· It is to be noted that Hyde Act does not apply to India. India's commitment will arise from the 123 Bilateral Cooperation Agreement which once approved by the US Congress will become law. The 123 Agreement as the prevailing law will then delineate the specific rights and the responsibility of the US and India that govern and control the Agreement's implementation.*

· The 123 Agreement is not circumscribed by various US laws and stands on its own as:

Customary international law ensures that the Hyde Act does not apply to India or override the Agreement. Articles 26 and 27 of the Vienna Convention on the Law of Treaties, 1969 read:

“Article 26: “Pacta sunt servanda” – “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”.

Article 27: “Internal law and observance of treaties” – “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

These Articles of the Vienna Convention are a codification of a longstanding principle of customary international law, confirmed in state practice, international agreements, and authoritative commentaries.

· Besides, the US Constitution provides that treaties made under the authority of the US Government “shall be the supreme Law of the Land.”

Article VI (2) of the US Constitution states that: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof and all Treaties made, or which

shall be made, under the Authority of the United States, shall be the supreme Law of the Land and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

The Left Parties’ Note refers to the China-US 123 Agreement which explicitly reproduces the principle of international law, that, parties may not invoke the provisions of internal law as justification for failure to perform a treaty. In this context, attention is invited to Article 27 of the Vienna Convention which says, “*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*”.

In effect, Article 16.4 of the Indo-US 123 Agreement provides for this by stating that “this agreement shall be implemented in good faith and in accordance with the principles of International Law.” China-US 123 Agreement only reiterates the principle of International Law which does not change or improve by reiteration. The absence of its reiteration in Indo-US 123 Agreement cannot change its applicability.

The Japan – US Agreement has two articles dealing with two different subjects: firstly, Article 14 which deals with any question concerning the interpretation or application of the agreement; and secondly, Article 12 which deals with termination of the agreement.

The provision in the India-US agreement comparable to Article 14 (of the Japan-US agreement) is Article 15, which deals with any dispute concerning the interpretation or implementation of the agreement. In the case of Japan, the remedy is to refer to arbitration whereas, in the case of India, the remedy is through negotiations. No other agreement has a clause similar to the one in the US-Japan agreement. Clearly, negotiations give India much greater freedom and flexibility than international arbitration.

Article 12 of the Japan-US Agreement is comparable to Article 14 of the India-US Agreement. In the Japan-US Agreement, there is a power to terminate and nothing further

is provided. In the India-US Agreement, under Article 14, there is a multi-layered process of consultations with enough safeguards built into the same. Therefore, Article 14 of the India-US Agreement is far superior in the sense that no agreement with any other country allows a period of one year for consultation after the dispute has arisen, and terminates after the end of one year.

#### CHINA-US AGREEMENT VERSUS INDIA-US AGREEMENT

In the China-US Agreement, Article 7 deals with termination and it is styled as "cessation of cooperation". It provides that the parties shall promptly hold consultations on the problem and nothing more. In the India-US Agreement, under Article 14, there is a multi-layered process of consultation and a period of one year for negotiations before termination can come into effect.

There is no clause in the China-US Agreement on any dispute concerning the interpretation or implementation or application. In the India-US Agreement, as stated already, there is Article 15. Further, and more important, point to be noted is that in Article 14 of the India-US Agreement, there is a requirement to give "reasons" for the proposed termination.

#### 2. FUEL SUPPLY ASSURANCES

The Joint Statement of 18 July 2005 provided *inter alia* that the US President would also seek agreement from the US Congress to adjust US laws and policies, and that the United States will work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India.

Subsequently, the 2 March 2006 Separation Plan provided: "*The United States has conveyed its commitment to the reliable supply of fuel to India. Consistent with the July 18, 2005, Joint Statement, the United States has also reaffirmed its assurance to create the necessary conditions for India to have assured and full access to fuel for its reactors.*"

September 17, 2007

*As part of its implementation of the July 18, 2005, Joint Statement the United States is committed to seeking agreement from the US Congress to amend its domestic laws and to work with friends and allies to adjust the practices of the Nuclear Suppliers Group to create the necessary conditions for India to obtain full access to the international fuel market, including reliable, uninterrupted and continual access to fuel supplies from firms in several nations.*

To further guard against any disruption of fuel supplies, the United States is prepared to take the following additional steps:

- i) The United States is willing to incorporate assurances regarding fuel supply in the bilateral US-India agreement to peaceful uses of nuclear energy under Section 123 of the US Atomic Energy Act, which would be submitted to the US Congress.
- ii) The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement.
- iii) The United States will support an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.
- iv) If despite these arrangements, a disruption of fuel supplies to India occurs, the United States and India would jointly convene a group of friendly supplier countries to include countries such as Russia, France and the United Kingdom to pursue such measures as would restore fuel supply to India.

The US Congress passed the Hyde Act in December 2006. This is an enabling legislation of the US, as noted above, which provides a permanent waiver for India from certain sections of the US Atomic Energy Act.

As noted above, the US had agreed to incorporate its assurances relating to fuel supply in the bilateral India-US

Agreement. This has been achieved in Article 5.6(a) of the 123 Agreement which specifically provides for reliable, uninterrupted and continual access to fuel supplies to India's reactors. The US commitment to India under the 123 Agreement to supply fuel for the lifetime of India's reactors is specific. The assurances provided in Article 5.6(a) stand by themselves.

Article 5.6(a) could also be read as a US commitment to amend its domestic laws should any law stand in the way of US fulfilling these fuel-supply obligations.

Further, to provide additional comfort to India, in Article 5.6(b) of the 123 Agreement, the US has agreed to include the provisions from the Separation Plan which elaborate the steps US would take to ensure uninterrupted and continual access to fuel supplies for India's safeguarded reactors.

The 123 Agreement also envisages, in consonance with the Separation Plan, US support for an Indian effort to develop a strategic reserve of nuclear fuel to meet the lifetime requirements of India's reactors.

As also noted above under (1), once the 123 Agreement is approved by the US Congress it will become US law, which as the US Constitution expressly provides "shall be the supreme Law of the Land". The US commitment for assured fuel supplies for the lifetime of India's safeguarded reactors should therefore be under no doubt.

Apart from the US commitment to which they are bound, after the NSG exemption, India will obtain fuel from other countries, consistent with our needs for assured uninterrupted fuel supplies for the lifetime of our reactors.

### 3. IAEA SAFEGUARDS AND ADDITIONAL PROTOCOL

The confusion in the Left Parties' Note arises from the fact that the Hyde Act is regarded as applying to India. Instead, India's obligation would arise from the India specific Safeguards Agreement with the IAEA.

In the 2 March 2006 Separation Plan, India had agreed to negotiate an India-specific Safeguards Agreement with the

IAEA in light of the understandings with the US regarding reliable, uninterrupted and continual access to fuel supplies. We had agreed to voluntarily place identified civilian nuclear facilities under India-specific safeguards in perpetuity and negotiate an appropriate Safeguards Agreement with the IAEA. The India-specific Safeguards Agreement will *inter alia* provide for corrective measures that India may take to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies. The 123 Agreement clearly provides for the application of IAEA safeguards, which are to be finalized through the India-specific Safeguards Agreement with the IAEA (Article 10). As envisaged by the Separation Plan, this will be in a phased manner.

While India will negotiate with the IAEA an India-specific Safeguards Agreement that Agreement will be brought into force only after the NSG exemption and bilateral cooperation agreements are in place, including the 123 Agreement with the US.

We will negotiate and finalise the India specific Safeguards Agreement just as we have finalized the 123 Agreement. The Prime Minister had stated that “*We seek the removal of restrictions on all aspects of cooperation and technology transfers pertaining to civil nuclear energy – ranging from nuclear fuel, nuclear reactors, to re-processing spent fuel, i.e. all aspects of a complete nuclear fuel cycle.*”

The India specific Safeguards Agreement will be linked to the fuel supply assurances to ensure the uninterrupted operation of our reactors over their lifetime. The IAEA safeguards system in INFCIRC 66/ rev.2 provide a template for facility-specific safeguards. We have agreed to apply safeguards (to the safeguarded reactors alone) in perpetuity in return for assurance of fuel supply. These will be reflected appropriately in our Safeguards Agreement and hence these will be India specific.

Our interest lies in using nuclear energy to meet our growing energy requirements, ensuring that there is no

interruption in the operation of our nuclear reactors. To safeguard against any eventuality of disruption in fuel supply, the right to take corrective measures to ensure uninterrupted operation of the safeguarded reactors has been incorporated in the 123 Agreement. The exact nature of the corrective measures would depend upon the nature of the disruption.

The Left Parties' Note refers to "the IAEA additional protocol and its intrusive pursuit clauses".

In the case of India the Agreement is to negotiate an additional protocol that will be India-specific. The additional protocol that India will enter into will be consistent with our national interests. What will be negotiated will have safeguards in respect of the safeguarded facilities and the safeguarded material.

#### 4. SEPARATION PLAN OF 2 MARCH 2006

There is no adverse implication of non-reference to Separation Plan in the 123 Agreement. The Separation Plan finalized voluntarily by Government of India is in our national interest. It is not a bilateral document. As noted by the Left Parties themselves, the Separation Plan provides the approach and the guiding principles which India would follow in deciding about the facilities it would put under safeguards. It is India which retains the sole right to decide which facilities would be designated as civilian. There is therefore no question of including a reference to the Separation Plan in the 123 Agreement which is a bilateral agreement with the United States. It is for India to decide which future reactors will come under safeguards. Foreign reactors using foreign supplied nuclear material, equipment and technology will come under safeguards. Decisions on future indigenously built and fuelled reactors will also be made by India voluntarily, keeping in mind our national interest, as has been done in the Separation Plan.

What has been incorporated in the 123 Agreement is that provision of the Separation Plan which is pertinent, namely, the fuel supply assurances as elaborated in paragraph

15 of the Separation Plan. These have been included in full in the 123 Agreement in Article 5.6.

#### 5. FULL NUCLEAR COOPERATION

Prime Minister in his statement to the Parliament on 17 August 2006 had stated, “*We seek the removal of restrictions on all aspects of cooperation and technology transfers pertaining to civil nuclear energy – ranging from nuclear fuel, nuclear reactors, to re-processing spent fuel, i.e. all aspects of a complete nuclear fuel cycle.*”

The 123 Agreement meets all these benchmarks. The transfers of fuel and reactors have been obtained in Articles 2.2, 5.1 and 5.3. Assurances to guard against any disruption of supply over the lifetime of India’s civilian reactors have been embodied in the Agreement (Articles 2.2(e), 5.6 and 14.8). Our right to reprocess, which is so critical for the three-stage programme of nuclear development, has been secured (Article 6(iii)). The Agreement opens the possibility of enrichment and reprocessing technology transfers (Article 5.2). This is an exception made for India, as US policy does not permit such transfers. The provisions of Article 5.2 keep this possibility open for India. Additionally, dual use items, which can be used for reprocessing and enrichment, will be transferred according to the respective laws and regulations (Article 5.2). The Agreement provides for both Parties to treat each other as they do other states with advanced nuclear technology.

We are not concerned with the Hyde Act as our obligations flow only from the 123 Agreement. The US will also be bound by the commitments it has undertaken in the 123 Agreement, which as noted earlier, will become law once the US Congress approves it.

Any restriction, at this point, on transfer of enrichment and reprocessing equipment to India at this point of time would not affect India as we have already developed and are currently operating our own equipment and facilities since 1964.



## UPA's Response to Left Parties' Note

The 123 Agreement provides, in Article 5.2, that *“Transfers of dual use items that could be used in enrichment, reprocessing or heavy water production facilities will be subject to the Parties’ respective applicable laws, regulations and license policies”*. For the new dedicated national reprocessing facility that we would be building, we can source the dual use items if it is required. Furthermore, such technology can be accessed from other NSG countries as well and is not prohibited under the 123 Agreement.

### 6. ANNUAL CERTIFICATION/ASSESSMENT BY THE US PRESIDENT

The reporting requirements, which the Note of Left Parties refers to, (Section 104(g)(2) of the Hyde Act) are for the US President. As stated earlier, our obligations flow from the 123 Agreement. The Hyde Act does not apply to us at all and that is why there is no reference to it in the 123 Agreement. The Government of India is not bound to provide any information in this regard and it is not our intention to do so.

The 123 Agreement provisions confirm that the waiver enabling US cooperation with India in civilian nuclear energy is a permanent one (Article 16.2). Continuing cooperation is not contingent on any annual certification provisions. Article 16.2 provides that the Agreement shall remain in force for 40 years and can be extended thereafter for additional periods of 10 years at a time. There is a conceptual difference between the waiver of provisions of US Atomic Energy Act and the annual reporting requirements. The waiver is permanent and cannot be revisited. The reporting requirements are internal between the US Congress and the US President and India is not concerned with the same.

The Note from the Left Parties acknowledges that the US President has stated that certain provisions of the Hyde Act will be treated only as advisory and not binding. The Note however suggests that future US Presidents may not interpret the Hyde Act in this manner. This is a hypothetical

scenario. We cannot speculate as to what course of action a future US president may take. What we have done is to provide in the agreement that termination and deviation from the Agreement would be possible only if there is a material violation of the Agreement (Article 14) and to spell out steps, measures, rights and obligations to guarantee the continued operation of India's reactors.

#### 7. CONSENT TO REPROCESS US ORIGIN SPENT FUEL

The 123 Agreement provides upfront consent to reprocess the US origin fuel (Article 6.3(iii)). There is no ambiguity in this.

To bring this right into effect, India will establish a new national reprocessing facility dedicated to reprocessing safeguarded nuclear material under IAEA safeguards. The Agreement also provides that both Parties will agree on arrangements and procedures under which such reprocessing will take place. The consultations on arrangements and procedures would be with respect to physical protection standards, storage standard, and environmental protections as set forth in different provisions of the Agreement. Consultations on arrangements and procedures are to begin within six months of a request by India and are to be concluded within one year. There is, thus, a definite timeframe for completion of consultations once a request has been made for reprocessing rights into effect after arrangements and procedures are agreed in one year.

It is not, at this moment, appropriate for Government to foreclose its options regarding the new reprocessing facility. Once civil nuclear cooperation is opened to India, India would seek the best possible combination of technology and economic factors while building the new reprocessing facility. As this would reprocess the spent fuel that we will receive, it would logically be under India-specific safeguards.

As for Tarapur spent fuel, with the expiration of 1963 Tarapur Agreement, this is no longer an issue requiring US permission or consent. The 123 Agreement does not cover

the fuel supplied to Tarapur I and II under the previous Agreement.

#### 8. ENERGY ISSUES

India's three-stage nuclear power programme holds immense promise for the future. The unique thorium-based technology would become an economically viable alternative over a period of time, following sequential implementation of the three stages. We must, in the meantime, explore and exploit every possible source of energy.

Given the energy requirements of the country, all sources of power – coal, hydro, nuclear, gas, wind – need to be exploited. Estimates of nuclear power capacity over the XI and XII Plan periods are based on capacity generation arising from completion of projects under construction, and proposals for commencement of work on new reactors – PHWR, AHWR and Fast Breeder reactors. Eleventh Plan proposals also include additional capacity generation based on the unit sizes now available internationally and demonstrated potential of NPCIL to take up new projects. The projected figures have thus been worked out after careful analysis.

NPCIL has not been availing budgetary support for last couple of years for its ongoing programmes. NPCIL has been rated AAA by CRISIL consistently for the last few years. Banks have been lending to NPCIL for its capital programme at competitive rates. They have evinced interest for lending for future plants. Foreign banks have also approached NPCIL to extended funding through loans and through external credits. The question of funding is not unique to the nuclear power sector. Given the energy requirements of the country, this is an issue which is relevant to meeting the energy demands of the country regardless of the source of the power.

IAEA data corroborates the resurgence of interest in nuclear power globally. The use of nuclear power has so far been concentrated in industrialized countries. The emerging pattern is of recent expansion being focused in developing countries. IAEA's projections for future growth have

increased in recent years. Its most conservative projection shows nuclear power capacity growing by about 13 per cent through 2020. Its high projection shows steady growth to about 640 gigawatts by 2030 – almost 75 per cent more than current capacity. Apart from India, China, Finland, France, Japan, the Republic of Korea and the Russian Federation have initiated specific nuclear power expansion plans. The United States has announced tax credits for the first 6000 megawatts of new nuclear construction. China has plans for a five-fold increase in nuclear capacity to 40 GWe by 2020 and a further three to four-fold increases to 120 – 160 GWe by 2030.

#### 9. IMPACT OF IMPORTED REACTORS ON DOMESTIC INDUSTRY

India's three-stage nuclear power programme is the mainstay of our power programme and holds immense promise for the future. Development of indigenous capabilities to support our nuclear power programme is a primary objective. Starting from the first two pairs of reactors viz. Tarapur (TAPS 1&2) and Rajasthan (RAPS 1&2), which were set up on a turnkey and technical cooperation basis respectively, we have achieved comprehensive capabilities in all aspects of setting up of Nuclear Power Plants. The imported reactors proposed to be sourced from many countries with guaranteed lifetime fuel supply will be additional to our indigenous nuclear power programme which will continue to grow, as noted above. The Indian nuclear industries have grown and diversified their operations and capabilities to many other high technology areas and have gained rich experience. Therefore, it is very likely that our own reactors, as commercially competitive systems, would become of interest to several other countries. This has the potential of opening up another set of opportunities. Besides, once international commerce and civil nuclear cooperation is available, India will have a wide choice of sources with competing technology levels, costs, and efficiencies.

#### 10. COST OF ELECTRICITY FROM DIFFERENT SOURCES

There are seventeen nuclear power reactors in operation. The current tariff ranges from 95 paise per kWh for TAPS 1&2 and less than Rs. 2 per kWh for MAPS, NAPS and KAPS. The current annual average tariff for all seventeen power reactors is about Rs. 2.30 per kWh. These are competitive to tariffs of non pit head coal thermal power stations at contemporary locations. There are very large areas in India away from coal pit heads, which do not have access to low cost fossil fuels. The tariff of coal based generation is sensitive to the distance of power station from the coalmines, whereas those of nuclear are location neutral.

A study "Economics of Light Water Reactors in India" in the year 2005, using levelised cost of generation, demonstrated that at 5 per cent real discount rate, the levelised cost of generation in paise/ kWh for different fuels is as follows: Nuclear – 114; Domestic coal at 800 kms from pit head – 160; Imported Coal at port – 162; and Gas – 179. The sensitivity analysis also revealed that the impact of the fuel price on the generation costs is least in case of the nuclear option.

The developments since then, in terms of increase in the uranium prices internationally, increase in the overnight cost of nuclear power reactors, and offers received in response to coal based ultra mega projects have been reviewed. Results indicate a first year tariff of about 250 Paise/kWh in the year 2014-15, which is considered competitive with other sources, mainly coal. The norms of tariffs of nuclear power stations are periodically reviewed by the Government based on recommendations of a high level committee. These norms are notified through a Gazette notification.

The overnight costs of commercial nuclear power reactors in the world vary from 1200 to 2500 US \$/ kWe. It is well known that the total costs depend on a number of factors.

Coal based capacity addition at pit heads locations is limited in view of the cooling water and environmental

considerations. Using indigenous coal for 10,000 MW would mean about 150 coal trains from pit head to power stations. The total requirement of imported nuclear fuel for 10,000 MW nuclear power is 350 tonnes a year, as against an imported coal requirement for the same energy of 35 million tonnes. The cost of such a magnitude of imports in terms of infrastructure at ports and the hinterland in terms of handling & transportation and commercial pressure on international coal pricing would have to be taken into account.

Any exercise of comparative costing would also have to take into account the cost in the future of traditional sources of energy such as hydrocarbons, keeping in view the country's heavy dependence on hydrocarbon imports.

#### 11. SHORTAGE OF INDIGENOUS URANIUM SUPPLIES

India has modest resources of Uranium but vast resources of Thorium. Work has been initiated to identify additional resources, particularly deep-seated Uranium resources, using the latest exploration technologies.

The current mismatch between demand and supply of Uranium has occurred because of an unprecedented improved performance of PHWRs, commissioning of new reactors, and a huge reduction in the gestation period of new reactors under construction.

The Government is fully seized of the need to, and has been working, to open new mines. During the last few years, new mines have opened at Turamdih and Banduhurang in the State of Jharkhand. Sustained efforts have been made to open greenfield Uranium mining and milling projects both in Andhra Pradesh and Meghalaya. Projects for opening up of new Uranium mines are being pursued. Government is confident to bridge the gap between demand for uranium and its supply over the next few years. It is closely monitoring various initiatives both in the areas of uranium exploration and uranium mining.

**12. TECHNOLOGY SANCTIONS AND THEIR IMPLICATIONS**

An exception has been made for India and the transfer of technology for the fuel cycle and dual use technology is envisaged in the 123 Agreement. Under Article 5.2, the Agreement opens the possibility of enrichment and reprocessing technology transfers. The US policy at present does not permit such transfers. Besides such technology can be accessed from other NSG countries as well and is not prohibited under the 123 Agreement. Consequently, we can import reactors, fuel as well as technology from the international market.

India has no intention to place fast breeder reactors under safeguards. The new reprocessing facility is not linked to India's breeder programme. The new facility is to reprocess foreign supplied spent fuel under safeguards and its products will be used in safeguarded reactors.

## Left Parties

# Rejoinder to the UPA's Note

September 19, 2007

### 1. THE IMPACT OF US NATIONAL LAWS ON THE 123 AGREEMENT

The UPA's Note has stated that the Hyde Act is only an enabling legislation and binding only on the US. It has further held that the core of the Hyde Act is that it provides "permanent waiver" to certain restrictions of section 123 of the US Atomic Energy Act and implicitly recognises "India's status as a Nuclear Weapons State". Neither of these statements is supported by the Hyde Act and the Joint Conference Report of the US Senate and House of Representatives on the Hyde Act. A relevant section of the Conference Report on the Hyde Act states:

"As in the Administration's proposed legislation, H.R. 5682 requires the President to determine that India is upholding its July 18, 2005 commitments as a prerequisite for using his waiver authority. The conferees believe that India's continued implementation of those commitments is central to the integrity of our bilateral relationship. *Therefore, the bill contains reporting requirements and a provision that calls for termination of exports in the event of violations of certain commitments.* In addition, the bill seeks to uphold existing statutory congressional oversight of US nuclear cooperation and exports." (Emphasis added)

It is clear from the above that the Hyde Act, as its



creators have envisaged and designed, does not provide a “permanent” waiver as claimed by the Government. The waiver is contingent upon “*continued implementation*” of certain commitments. The Hyde Act contains provisions of reporting requirements and a provision for termination and the reporting requirements have been designed with possible termination in mind. Moreover, the Hyde Act also calls for “reduction and eventual elimination” [Clause 103 (b) 5] of India’s nuclear weapons. Therefore the claim that there is an implicit recognition of “India’s status as a Nuclear Weapons State” is factually incorrect. The Government seems to have seriously misunderstood the implications of the Hyde Act. Much of the response of the UPA to the Left Parties’ Note arises from such a misunderstanding of the Hyde Act and the legislative intent behind its provisions.

The UPA’s response that the Hyde Act does not apply to India is irrelevant. What is germane to the discussion is how the Hyde Act would structure the implementation of the 123 Agreement by the US administration. The Government seems to believe that the 123 Agreement, once it is passed by the US Congress, will stand on its own and not be circumscribed by other domestic laws of the US. However, Section 2.1 of the 123 Agreement itself clearly states that the agreement shall be implemented in accordance with the respective national laws of the two countries. Officials of both sides have clarified that the Hyde Act and the 123 Agreement are consistent with each other. During the official briefing on the 123 Agreement on 27<sup>th</sup> July 2007, US Under Secretary of State Nicholas Burns categorically said: “. . . we were very careful when we began these — the latest phase of these negotiations to remind the Indian Government that since the President and Prime Minister had their two agreements of July ‘05 and March ‘06, something else had happened: The Congress had debated over six, seven months those agreements and *the Congress has passed the Hyde Act*. And so we had to make sure that *everything in this US-India civil nuclear agreement, the 123 Agreement, was completely*

*consistent with the Hyde Act and well within the bounds of the Hyde Act itself.*” (emphasis added) National Security Adviser M.K. Narayanan, in an interview to The Hindu dated July 28, 2007, has also confirmed the same: “As far as we are concerned, we haven’t breached the Hyde Act...We have seen to [it] that no law is broken.” If we take the above into account, this indicates that on all those matters that the 123 Agreement is silent, the Hyde Act will bind the US actions. Therefore both the 123 Agreement and the Hyde Act have to be read in conjunction in order to understand the implications of the Hyde Act and the 123 Agreement. Since both sides agree that the Hyde Act and the 123 Agreement are not in contradiction, therefore the 123 Agreement overriding the Hyde Act, being a subsequent legislation, does not arise.

The UPA’s Note cites Article 27 of the Vienna Convention on the Law of Treaties: “A Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. While this is indeed a norm of customary international law, *it is not appropriate in the case of the 123 Agreement*, since the 123 Agreement itself *explicitly* refers to its implementation in accordance with “national laws”. Article 27 does not appear to deal with a situation when a reference to national laws is made in the agreement itself. This situation, it is worth reiterating, is to be distinguished from a situation where national laws are invoked after the agreement has been accepted by both parties simply to avoid fulfilling voluntarily undertaken obligations. It may also be noted that *the US has not ratified the Vienna Convention*. Thus the US cannot be held to account, in the ultimate analysis, on the basis of the Vienna Convention.

Similarly, the UPA’s Note states, *without any comment*, that Article VI (2) of the US Constitution provides that “all treaties made” under the authority of the US “shall be the supreme law of the land”. No attempt has been made to understand the scheme of Article VI (2). Reference to the widely accepted understanding of Article VI (2) of the US

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Constitution would reveal that there is no hierarchy between treaties and domestic legislations in the US, and whichever is enacted later overrides the earlier one. Therefore, any subsequent legislation passed by the US Congress can override the 123 Agreement. This has not been considered in the UPA's Note.

The provision for the application of the principles of international law contained in the China-US 123 Agreement is not an empty reiteration of Article 27 of the Vienna Convention as the UPA's Note seems to imply. The text of the Chinese 123 Agreement guards against the adverse consequences that may result from the US enacting fresh domestic legislation that would require the renegotiation of an earlier treaty. Moreover, the Chinese 123 Agreement recognises China as a nuclear weapons state and is quite different in terms of its obligations and safeguards than the Indian 123 Agreement. For example, Article 8(2) of the China-US 123 Agreement says "bilateral safeguards are not required", while in India's case, the US has not only insisted on IAEA safeguards but has provisions for US inspections also, in case IAEA fails to provide inspections.

The UPA's Note claims that the India-US 123 Agreement is "far superior" to the Japan-US Agreement since in the former there is a multi-layered process of consultations with enough safeguards built into the same. It also claims that the Indian 123, unlike the Japanese 123, allows for a one-year period of consultation before termination in case of dispute. The above is again inaccurate on many counts. The UPA's Note fails to mention in this regard that Article 14.2 of the India-US 123 provides an overriding escape clause from all considerations of consultations etc. and terminates the agreement immediately if "the Party seeking termination . . . determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations." Further the question of material violations arises *only* in the context of a violation of the Agreement being cited as the cause for termination as laid

down in Article 14.3. The Hyde Act provides for other possibilities for termination as in Section 103 (a)(6), including the provisions of the Hyde Act itself, the relevant provisions of the Atomic Energy Act of 1954 *or any other United States law. Therefore, the India-US 123 Agreement has provided an open ended right of termination to the US by citing any reason it wishes.* In contrast, the Japan-US 123 Agreement permits either party to cease or terminate cooperation only when there is non-compliance with the accord's provisions or the arbitral tribunal's decisions or a material breach of safeguards.

There are certain other inaccuracies in the UPA's Note. The claim that no 123 Agreement has a provision for arbitration by a tribunal similar to the provisions of the Japanese 123 is factually incorrect. There is a provision for arbitration by tribunal in the US-Euratom 123 Agreement as per Article 14.5(b), (c) and (d) of that agreement. Article 14.5(b) of the Euratom 123 explicitly provides that the arbitration tribunal shall make its decision "on the basis of the application of the rules and principles of international law, and in particular the Vienna Convention on the Law of Treaties." The argument that arbitration is inferior to consultations is again difficult to understand. It is only when negotiations fail that arbitration is undertaken. It is difficult to accept that Japan and Euratom, both close allies of the US, should have fought long and hard for the arbitration clause, if it is inferior to consultations. The Government should also explain in what way the consultations clause is superior to the Tarapur 123 Agreement's consultations clause, which did not help India much when the US stepped out of its obligations to supply fuel.

While dishonoring international obligations is not undertaken lightly by any country, including the US, this fact will not in the final analysis stand in the way of perceived "national interests". In this regard it may be noted that to the extent the provisions of the Hyde Act do not conflict with or cover the same ground as the 123 Agreement, even the explicit

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adoption of the latter by the US Congress will keep those provisions alive. This is also true of Section 103 [Statements of Policy] of the Hyde Act. It is often cited that while approving the Hyde Act President Bush observed:

Section 103 of the Act purports to establish US policy with respect to various international affairs matters. My approval of the Act does not constitute my adoption of the statements of policy as US foreign policy. Given the Constitution's commitment to the Presidency of the authority to conduct the Nation's foreign affairs, the executive branch shall construe such policy statements as advisory.

What needs to be noted here is that by similar reasoning a subsequent US President, invoking the President's authority under the US Constitution to conduct foreign policy, may treat the statements of policy under Section 103 of the Hyde Act with greater seriousness and of a binding nature. This matter has to be seriously addressed, especially because the 123 Agreement is for 40 years. Should India be bound on the expectation of permanent goodwill of all future US Presidents?

### 2. FUEL SUPPLY ASSURANCES

The UPA's Note reproduces Section 15 of the Separation Plan of March 02, 2006, which has now been included as Article 5.6 of the 123 Agreement, without citing its connection to the earlier Plan. However, the Hyde Act has ignored all the fuel supply assurances made in the Separation Plan and left them out of the Act. Moreover, several subsections were introduced in the Act, which run counter to those assurances. The UPA's Note contends that the matter of fuel assurance is settled in Article 5.6 (a) on the one hand, while stating on the other hand that Article 5.6 (a) could also be read as a "US commitment to amend its domestic laws, should any law stand in the way of US fulfilling these fuel-supply obligations". It is unfortunate that the Government is still not clear about the

fuel supply assurances in the 123 Agreement, which it has itself negotiated. Several sections of the Hyde Act stand in the way of the fuel supply assurances contained in Article 5.6 of the 123 Agreement. Unless these sections in the Hyde Act are amended, the fuel supply assurance available through the 123 Agreement would remain illusory. Sections 103(b)(10) and 104(g)(2)(F)(iii) of the Hyde Act stand in the way of India accumulating adequate nuclear fuel reserves for imported reactors. Sections 102(13), 103(a)(4), 103 (a)(6) and 104(b)(7) may all need to be amended before other NSG nations can help us accumulate fuel reserves as stated in the fuel supply clause. The Left Parties are of the clear opinion that the Hyde Act stands in the way of fuel supply assurances and without its amendment those assurances would not hold. How can the Government go ahead committing the country irrevocably to such a 123 Agreement for the next 40 years before getting the Hyde Act amended?

The argument that other NSG countries will give us more generous terms may be examined in the context of the following section in the Conference Report on the Hyde Act:

Equally, the United States must maintain the consensus decision mechanism of the NSG, and not look for any way around that requirement. The conferees believe that the effectiveness of the NSG rests upon its consensus decision-making, resulting in unified policies and enhanced compliance with those policies. The conferees are mindful that a country outside the regime that seeks an exception from NSG guidelines could agree to stringent safeguards with some NSG members, but later import only from other NSG members that did not impose such requirements. *To preclude such a scenario, the conferees urge the Executive branch to persuade other NSG members to act in concert in terms of the timing, scope, and safeguarding of nuclear supply to all countries, including India. In particular, the conferees intend that the United States seek agreement among*

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*NSG members that violations by one country of an agreement with any NSG member should result in joint action by all members, including, as appropriate, the termination of nuclear exports. In addition, the conferees intend that the Administration work with individual states to encourage them to refrain from sensitive exports.*

*... if US exports to a country were to be suspended or terminated pursuant to US law, it will be US policy to seek to prevent the transfer to such country of nuclear equipment, material or technology from other sources.* This concern could arise if, for example, there were a nuclear test explosion, termination or abrogation of IAEA safeguards, material violation of IAEA safeguards or an agreement of cooperation with the United States, assistance or encouragement of a non-nuclear weapon state in nuclear-weapons related activities or reprocessing-related activities, or (in India's case) failure to uphold its July 18, 2005, Joint Statement commitments. In such a circumstance, the conferees expect the United States to encourage other supplier countries not to undermine US sanctions. (emphasis added)

### 3. IAEA SAFEGUARDS AND ADDITIONAL PROTOCOL

The UPA's Note states: "We have agreed to apply safeguards (to the safeguarded reactors alone) in perpetuity in return for assurances of fuel supply. These will be reflected appropriately in our Safeguards Agreement and hence these will be India specific". However, it is evident from the extensive debates on this issue in the US Senate Foreign Relations Committee in 2006, that the US administration and the Congress expect India to agree to unqualified IAEA safeguards in perpetuity, with no conditions on life-time fuel supply guarantees associated with it. Has the government reconciled this major difference with the US administration before proceeding with negotiations with the IAEA? The UPA's Note has failed to mention any corrective measure

which the Government may have in mind to ensure uninterrupted operation of the civilian reactors in the event of disruption of foreign fuel supplies. The UPA's Note evades the question by answering that "corrective measures would depend on the nature of the disruption". *There does not seem to be any enforceable link between safeguards in perpetuity to be executed with IAEA and disruption of fuel supply. Will the UPA concretely elaborate upon some of the corrective measures that have been conceived, in the case of disruption of fuel supply?*

#### 4. SEPARATION PLAN OF MARCH 02, 2006

The UPA's response says: "There is no adverse implication of non-reference to the Separation Plan in the 123 Agreement. The Separation Plan finalized voluntarily by Government of India is in our national interest. It is not a bilateral document ". However, on August 17, 2006 the Prime Minister told the Parliament "...during President Bush's visit to India in March this year, *agreement was reached between India and the United States* on a Separation Plan in implementation of the India-US Joint Statement of July 18, 2005." This clearly indicated that the Separation Plan is a mutually agreed, bilateral document. However, now the Government holds that this Plan is *not* a bilateral document. There is no mention of the Separation Plan of March 2, 2006 in the 123 Agreement. This Plan is the only document wherein the Indian position on the approach and guiding principles under which separation will be done, the present and future facilities we intend to place on safeguards etc. are described. By not taking this document into official record through the bilateral 123 Agreement, the Government has left the possibility open for future US administrations to dispute the contents of the Plan, including the basic policy statements contained therein on separation. The only US document which calls for details of the Separation Plan of March 2, 2006 is the Hyde Act. Sections 104(c)(2)(a), 104 (g) (1)(A)(ii) and 104(g)(2)(D)(i) of the Act all refer to the Plan. At a later date, if there arises a dispute



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on the contents of the Plan, India will have to take shelter under what is included about the Plan in the Hyde Act. Ironically, however, the UPA's Note repeatedly states that India has nothing to do with the Hyde Act and the 123 Agreement is a stand alone agreement.

### 5. FULL NUCLEAR CO-OPERATION

There are two separate issues regarding full nuclear co-operation: one pertains to "sensitive nuclear technology" and the other to "dual use technology". "Sensitive nuclear technology" is defined under Article 1(Q) of the 123 Agreement, while the definition of dual-use item appears in Article 1 (E), where it says: " 'Dual-Use Item' means a nuclear related item which has a technical use in both nuclear and non-nuclear applications."

Regarding dual use technology, the UPA's Note quotes Article 5.2 of the 123 Agreement which says that "Transfers of dual-use items that could be used in enrichment, reprocessing or heavy water production facilities will be subject to the Parties' respective applicable laws, regulations and license policies". Clearly, no relaxation is being made for India on this count since even without the 123 Agreement, the applicable laws, regulations and license policies would have governed such transfers. The UPA's Note states: "For the dedicated national reprocessing facility that we would be building, we can source the dual use items, if it [sic] is required". Under the applicable laws, regulations and licensing policies presently existing, this is not possible for nuclear facilities. There are restrictions on the export of such technologies to India both by the US and by the NSG. Such items may be allowed to be exported *on a case-by-case basis, for strictly non-nuclear use*, after strict verification and application of end-use restrictions. These restrictions have not been lifted under the 123 Agreement.

For sensitive nuclear technology the UPA's Note states: "Furthermore, such technology can be accessed from other NSG countries as well, and this is not prohibited under the

123 Agreement”. It may not be prohibited under the 123 Agreement, but Sections 103(a)(5) and 104(d)(4)(A) & (B) of the Hyde Act will not permit such transfers. The intent of all US policy currently is to restrict enrichment and reprocessing technologies to the few countries that already possess them. India, as has been repeatedly declared by the US, is not in this list of countries. Further the Conference Report on the Hyde Act states clearly that the US administration at no point required the inclusion of enrichment and reprocessing rights in the nuclear deal with India. To quote the Conference Report: “The conferees Note that the Administration has already stipulated that ‘full civil nuclear cooperation’, the term used in the July 18, 2005, Joint Statement between President Bush and Indian Prime Minister Singh, *will not include enrichment or reprocessing technology*” (emphasis added).

Further, the Section 103(a)(5) stipulates that it shall be US policy “. . . to work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India”. Section 104(b)(7) requires the President to certify that the NSG has decided by consensus to permit supply to India of nuclear items covered by the guidelines of the NSG. The policy directive from Congress and the consensus requirement in NSG decisions would mean that the US administration representative in the NSG will be legally compelled to vote against any transfer of sensitive technology and equipment for enrichment, reprocessing and heavy-water production to India.

#### 6. ANNUAL CERTIFICATION/ASSESSMENT BY THE US PRESIDENT

The UPA’s Note fails to explain the rationale behind the clear contradiction of the Prime Minister’s solemn assurance to the Indian Parliament that annual certification by the US President “is not acceptable to us”. Since nothing materially has changed in the Hyde Act since the time of the Prime Minister’s assurance (except calling certification as “assessment”),

it is not clear how the earlier unacceptability of the Hyde Act's provisions is now transformed into one of "India is not concerned with the same as these reporting requirements are internal between the US Congress and the US President". With respect to the UPA's contention of the hypothetical nature of the queries raised and the issue of permanent waiver, they have already been addressed in Section 1 above. If the proposition that a future President may choose to consider the sections that President Bush has stated are non-binding is considered hypothetical, so is the argument that no future President will differ with President Bush on this count.

#### 7. CONSENT TO REPROCESSING

The UPA's Note states that it has got an upfront consent for reprocessing and there is no ambiguity on this. This is not borne out by Section 6(iii) of the 123 Agreement, which talks about "subsequent arrangements and procedures" which need to be arrived at. The UPA should first explain in what manner the in-principle consent for reprocessing in the current 123 Agreement is different from that in the Tarapur 123 Agreement, where also there was such in-principle consent for reprocessing but no reprocessing has been allowed so far. In order to exercise the right to reprocess, as per Section 131 of the Atomic Energy Act of the US, a separate agreement has to be negotiated and Congressional consent taken. Therefore, at this stage the "upfront reprocessing rights" are only notional.

#### 8. ENERGY ISSUES

Energy requirements of the country merit the exploitation of all sources of power. However, it must be recognised that capital cost of plants and the cost of electricity are also very important concerns, especially in the backdrop of experiences like the Enron fiasco. The Government of India for the last 15 years has not been able to find money to invest in the power sector, leading to a slow down in the sector and increased shortages. Therefore, the capital cost of plants is

important in choosing the energy mix for the future. In this, the capital cost of imported reactor based plants, which is almost three times that of equivalent capacity coal-fired plants, will need to be considered.

The UPA's Note does not respond to the queries made in the Left Parties' Note regarding the basis of the Government's projection of reaching 40,000 MW of nuclear power generation by 2021-22. It is silent on the Integrated Energy Policy of the Planning Commission. It is simply stated, "projected figures have thus been worked out after careful analysis". No policy document is quoted or referred to. If the Government has indeed worked out a different energy scenario from that contained in the Integrated Energy Policy, there is a need to put this in the public domain for an informed debate. Only after that can future requirements of nuclear energy be projected instead of using arbitrary projections to justify very large investment in imported reactors.

The UPA's Note refers to IAEA data in order to show "the resurgence of interest in nuclear power globally". But again there is no reference to any specific document or study in this regard. Worldwide, there are 429 power reactors in operation, many of which are slated to be phased out in the coming years. Only 24 new plants are under construction. By all accounts, the major thrust in new nuclear plants is supposed to be in China and India and not the developed countries. In China's case, they are currently adding about 50 GW of power generation capacity every year and therefore the 40 GW figure to be added by 2030 stated by the UPA's Note would be 4-6 per cent of their additional installed capacity. The US has announced various subsidies for the next 6 nuclear plants and hopes this will spur the dormant US market for nuclear plants. Even with this, no new nuclear plant has begun construction. Therefore the talk of a "renaissance" in nuclear power is at the present only speculative and very little evidence is visible regarding such a renaissance.

Even though various energy fora have been pushing for

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the use of nuclear power to reduce greenhouse gas emissions, the Inter-Government Panel on Climate Change has estimated that upto 2030, the expansion of nuclear power would have only marginal impact on greenhouse gas emissions. Thus decarbonising the economy using nuclear power is also not a serious option.

### 9. IMPACT OF IMPORTED REACTORS ON DOMESTIC INDUSTRY

The UPA's Note has not addressed the central issue raised that if the power plants are set up with domestic reactors, a consequent sourcing of equipment from domestic industry will take place. If they are imported in large numbers as is being proposed, then such sourcing will help industries elsewhere but not domestic industry: we would be helping to revive the moribund nuclear industry in the US and elsewhere. By arguing, as the UPA's Note does, that imported Light Water Reactors would be additional to domestic ones, the real issue is not addressed. The UPA Note has also failed to respond to the question how much of the future nuclear programme will be from domestic reactors and how much from imported reactors. As we had raised in our earlier Note, what is required is a detailed study of the proposed nuclear investments taking into account the imported and domestic options, a study which the Government appears not to have done.

### 10. COST OF ENERGY FROM VARIOUS SOURCES

The problem with UPA's Note is that it first talks about the historical costs of electricity from different vintages of plants and then tries to average the same. Such an approach does not carry much meaning in evaluating energy options today. For example, in coal-fired plants, NTPC's Singrauli plant delivers power at less than Re 0.80 per unit while its newer plants deliver power at around Rs. 2.00. This is because the capital servicing cost of older plants such as Singrauli and TAPS (Tarapur Atomic Power Station) 1 & 2 have been entirely written off, allowing for a cheaper generation tariff.

Similarly, hydro plants in Kerala supply power at only Re. 0.03. This in no way can be used to argue that a hydro plant today will generate power at similar costs nor can current hydro tariffs be clubbed with older ones to arrive at an average cost. Therefore the statement that the average cost of generating electricity from existing nuclear plants in the country is Rs. 2.30 is misleading. The key issue is the cost of power from the latest nuclear and coal fired plants or estimated cost of nuclear and coal fired plants today. If we take the cost of the newer nuclear plants, per unit costs are Rs. 3.03 from Kaiga and Rs.2.85 from Tarapur. These need to be compared to the cost of generation from the same vintage of coal fired plants, which are around Rs.2.00 per unit even for non-pithead plants.

For future plants, the Government has referred to costs of electricity from a study “Economics of Light Water Reactors in India” to justify the figures of Rs. 2.50 per unit of electricity and the comparative advantage of nuclear power. As such a study is not in the public domain, it is difficult to comment on its calculations. However, the levelled tariff of Rs.1.14 per unit for nuclear is not in conformity even with the average tariff from nuclear plants that the UPA’s Note mentions, let alone the latest generation costs of plants such as Kaiga and Tarapur quoted above.

We have a study of the Nuclear Power Corporation “Light Water Reactors in India: an Economic Perspective”. This document also does not furnish any detailed calculations. However, it takes the capital cost per MW as Rs. 5.74 crore, which is lower than even the cost of domestic reactors. Even by UPA’s own admission, the figure of Rs.5.74 crore per MW corresponds to the lowest end of the capital cost band of \$1200-2500 per KW as per the UPA Note. The figures used are from the original cost estimates of Koodankulam, where two Light Water Reactors are being supplied by the Russians. According to press reports, the current cost estimates of Koodankulam are already around \$1,700 per KW. This is not surprising, as almost all nuclear plants including that of

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NPC have had large cost and time over runs. Therefore, the cost of electricity from nuclear plants by taking unrealistic capital cost is not very meaningful. It has been estimated that the cost of Koodankulam power is unlikely to be less than Rs.3.75 per unit, which is in consonance with the cost per unit from Kaiga and other such plants, factoring in time difference of installing these plants.

The UPA's Note talks about imported reactors costing between \$1200-2500 per KW. Again, the question posed in the Left Parties' Note was, what are the studies on the basis of which comparative costs of different nuclear reactors and of the constructed nuclear plants have been arrived at? The wide range of prices of reactors quoted by the UPA's Note appears to indicate that no serious study has indeed been made in this regard. In the absence of such a study, we then would need to follow existing costs of nuclear plants and various studies done by independent agencies for estimating the capital costs of nuclear plants. And all this points to \$2,000 per KW as a reasonable cost: "the cheapest plants built recently, all outside the US, have cost more than \$2,000 per kilowatt. (Nuclear Power's Missing Fuel, 10-7-2006, Business Week magazine).

If we use the capital costs of Rs. 9 crore per MW for overnight costs (costs without taking interest during construction), the more commonly used figures internationally for Light Water Reactors, the cost of electricity from such plants is in the range of Rs. 4.75 per unit. As against this, the cost of electricity using imported coal in the Mundra project is Rs. 2.20. The Sasan project, which is at pithead and therefore has lower cost of fuel is around Rs. 1.19 per unit. Even gas-based units at much higher gas costs of \$4-5 per million BTU would be Rs. 2.50-Rs.3.00 per unit of electricity. These are well below the cost of electricity from imported reactors.

As we have said in our Note, we do believe that the nuclear option must be kept open and the technology that we have developed indigenously as well as investments for the

Fast Breeder and the thorium cycle need to be kept up. The question here is how do high cost imported reactors fit into such a programme and are we not endangering our economy and the power sector by making investments in such high cost power?

#### 11. SHORTAGE OF URANIUM

The UPA's Note has not answered why a shortage of uranium has occurred in the country, given that the amount of uranium required to power the indigenous PHWR programme was well known. However, if the Government states that the planned and on-going investments in uranium mining will bridge the gap between supply and demand, is it asserting that for the domestic PHWR and the Fast Breeder programme, we have enough uranium supplies? If so, where is the need for importing uranium? Is it then only for the high cost imported Light Water Reactors?

#### 12. SERIOUS LIMITATION PUT ON INDIGENOUS THREE-STAGE POWER PROGRAMME

The UPA's Note states, "India has no intention to place fast breeder reactors under safeguards. The new reprocessing facility is not linked to India's breeder programme". The Government's position has all along been that the import of foreign reactors was for the "additionality" they provided, in both the direct electricity production from these reactors, but more importantly due to the benefit of reprocessing their spent fuel and using the plutonium thus obtained in downstream fast breeders which form part of the three-stage power programme. For example, Table-11 from the DAE document "A Strategy for Growth of Electrical Energy in India" shows that from using the reprocessed plutonium from 8000 MWe of light water reactors (LWRs) by 2022, just the additional power produceable through the breeders in the three-stage indigenous programme could be 61,000 MWe. But, it is clearly stated in the UPA's response that the products (plutonium) from the new reprocessing facility will be used



in safeguarded reactors and these do not include fast breeders.

The Separation Plan of March 2, 2006 stated that "*India has decided to place under safeguards all civilian thermal power reactors and civilian breeder reactors, and the Government of India retains the sole right to determine such reactors as civilian*". It appears now the Government has taken a decision that India will have no civilian breeders. The plutonium from the new facility will then not be used in breeders, the mainstay of the three-stage indigenous programme. This is a major alteration of the Separation Plan presented to Parliament in March 2006 and harms the indigenous breeder development programme seriously.

The output from a safeguarded facility (in this case, the plutonium produced in the new reprocessing facility) can only be used in other safeguarded facilities. By taking the new decision that no fast breeder reactor will be placed under safeguards, the consequence is that no plutonium from foreign spent-fuel will ever be feeding the fast breeders of the three-stage indigenous programme. The earlier decision of the government was that we will have both civilian and military fast breeders. The civilian ones will be placed under safeguards and will use plutonium from foreign spent-fuel, while the military breeders will be outside safeguards and use the plutonium coming from our PHWR spent-fuel, where they have been fuelled with Indian natural uranium. By the current decision, the Government has succumbed to the US pressure to limit the fast breeder reactor and thorium utilization programme merely to using the plutonium that we can produce from limited Indian uranium supplies. If this is the case, the attractiveness of importing reactors to expand our future installed nuclear capacity has been substantially diminished. We are then proposing to expand that part of the nuclear energy programme that will be far more dependent on external supplies and starving that part of the nuclear energy programme that could provide us with much greater energy security.

The purpose of reprocessing spent fuel is to use the

plutonium thus recovered in breeder reactors. Otherwise, it is cheaper to hold the spent fuel in holding ponds and then bury them in stable geological strata. Reprocessing is much more expensive and is normally undertaken only for recovering the plutonium. This is the reason that the US, which has a stock-pile of plutonium and does not use breeder reactors, does not reprocess spent fuel anymore. Reprocessing is important for India's three-stage indigenous programme only because it proposes to recover plutonium from spent fuel for use in the breeder programme. As any imported fuel would be under safeguards, the plutonium from such fuel would necessarily be under safeguards and cannot be used in non-safeguarded facility. If the breeder programme is kept out of safeguards, the purpose of reprocessing and building up this expensive facility is difficult to understand. Will the UPA explain what is the purpose of reprocessing that they see within the current scheme they are proposing? The UPA's Note states: "The new reprocessing facility is not linked to India's breeder programme. The new facility is to reprocess foreign supplied spent fuel under safeguards and its products will be used in safeguarded reactors." What then are these "safeguarded reactors" that are not breeder reactors and will still use the products of reprocessing spent fuel, presumably plutonium?

The UPA's Note has not responded to the specific query made in the Left Parties' Note as to whether the implications of building a new reprocessing plant under the present technology sanctions, and then putting it under IAEA Safeguards and Additional Protocol, have been examined.

## UPA

# Responses to the Assertions in the Left Parties' Rejoinder of 19 September

September 24, 2007

### 1. THE IMPACT OF US NATIONAL LAWS ON THE 123 AGREEMENT

**1.1 Assertion:** UPA Note's contention that the Hyde Act provides a permanent waiver and implicitly recognizes India's status as a Nuclear Weapons State is not supported by the Hyde Act and the Joint Conference Report.

**Response:** The waiver provided by the Hyde Act is permanent in that it is not limited by time and does not require renewal through further and periodic acts of the US Congress. The Sunset provision [Section 104(f)] confirms that the waiver is one-time and not recurring. The Left Parties' Note appears to confuse reporting requirements as a qualification on the permanence of the waiver. The implicit recognition of India as a nuclear weapons state is affirmed by the Hyde Act's approval of civil nuclear energy cooperation with India despite our strategic programme and non-acceptance of full scope safeguards. In fact, Section 104 (b)(i) and Section 104 (c)(2)(A) of the Hyde Act both refer to India's military nuclear facilities, which is a terminology that can only apply to a nuclear weapons state.

**1.2 Assertion:** UPA's response that Hyde Act does not apply to India is irrelevant. What is germane is how the Hyde

Act would structure the implementation of the 123 Agreement by the US Administration.

**Response:** There is a distinction between the Hyde Act, which is an internal US legislation, and the 123 Agreement, which has been bilaterally negotiated and agreed upon. India's commitments can only arise from an arrangement to which it is party, not from a legislation that was enacted by a foreign legislature. Once the US Congress approves the 123 Agreement, it would be the provisions of the 123 Agreement and not the Hyde Act that would determine the rights and obligations of the Parties. The Left Parties' Notes itself recognizes in paragraph 3 of page 2 that 'whichever is enacted later overrides the earlier one'. The approval by the US Congress of the 123 Agreement will obviously be enacted later than the Hyde Act and would be the definitive interpretation of US obligations in this regard. Left Parties may kindly clarify which Sections of the Hyde Act will impact the implementation of the 123 Agreement, once the Agreement is approved by the US Congress.

**1.3 Assertion:** U/S Burns has stated that the 123 Agreement was completely consistent with the Hyde Act and well within the bounds of the Hyde Act itself. Our NSA has been quoted to the effect that we have not breached the Hyde Act and no law has been broken (in concluding the 123 Agreement).

**Response:** Secretary Rice in a public statement on 9 December 2006 took the position that the Hyde Act "*explicitly authorizes civil nuclear co-operation with India in a manner fully consistent with the US-India Joint Statements of July 19, 2005 and March 2, 2006.*" It is clear from the statement that the Hyde Act is an enabling statute authorizing the US Administration to move forward with India in civil nuclear energy cooperation so that the commitments of the 18 July and 2 March Joint Statements could be fulfilled. This is the authoritative US position and it is in this context that the provisions of the Hyde Act should be considered.

The question of breaching the Hyde Act does not arise because the 123 Agreement, when approved by the Congress, will be the bilateral agreement determining the rights and obligations of the two parties. The position in this regard was recently affirmed by Assistant Secretary Richard Boucher who stated clearly during a briefing on 18 September 2007 that “*the deal between the United States and India is the 123 Agreement*”.

**1.4 Assertion:** After quoting remarks attributed to US Under Secretary and our NSA, the Left Parties' Note states that on all those matters that the 123 Agreement is silent, the Hyde Act will bind the US actions.

**Response:** The text of the Hyde Act begins by defining its purpose as “*to exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.*” The Hyde Act is an enabling legislation and not the implementing mechanism for cooperation between India and USA.

**1.5 Assertion:** Article 27 of the Vienna Convention on the Law of Treaties does not appear to deal with a situation when a reference to national laws is made in the Agreement itself. This is to be distinguished from a situation where national laws are invoked after the Agreement has been accepted by both parties simply to avoid fulfilling voluntarily undertaken obligations. The US has not ratified the Vienna Convention.

**Response:** As per Article 2.1 of the 123 Agreement, the implementation of this Agreement will take place in accordance with the national laws of the respective parties. At the same time, Article 16.4 is clear that the 123 Agreement shall be implemented in accordance with the principles of international law. It is customary that when international obligations are undertaken, national laws are brought in conformity. Divergence between the two makes the performance of any agreement untenable. It cannot be the position

of a Government that it would implement an international agreement in a manner inconsistent with its national laws. The reference to Article 27 of the Vienna Convention reflects a reiteration of customary international law that it codifies.

**1.6 Assertion:** There is no hierarchy between treaties and domestic legislations in the US and whichever is enacted later overrides the earlier one.

**Response:** This only confirms the Government's position on the 123 Agreement which was enacted later than the Hyde Act. International obligations such as the 123 Agreement are the "supreme law of the land" under Article VI (2) of the US Constitution. For the purposes of implementation of an international treaty, domestic law has to be brought in consonance with international obligations.

**1.7 Assertion:** UPA's Note implies that the China-US 123 Agreement contains an empty reiteration of Article 27 of the Vienna Convention. The China-US Agreement "guards against the adverse consequence that may result from the US enacting fresh domestic legislation". The Agreement also states that bilateral safeguards are not required. It is different in terms of its obligations and safeguards than the Indian 123 Agreement.

**Response:** It may be noted that the first part of Article 2.1 of both the China-US and India-US Agreements are identical. In the second half of the Article, the reference to international law continues in the China-US Agreement but a similar provision has been shifted to Article 16.4 in the India-US Agreement. Therefore, Article 2.1 of the China-US Agreement should be compared as a whole to Article 2.1 read with Article 16.4 of the India-US Agreement.

The Left Parties' Note appears to imply that the formulation in Article 2.1 of the China-US 123 Agreement on international law is more advantageous than Article 16.4 of the India-US Agreement. In fact, the language of Article 16.4 of the India-US Agreement is more categorical through

its reference to “*shall be implemented*” rather than the China-US language of “*recognize, with respect to the observance of this Agreement, the principle . . .*”.

There is no provision in the China-US Agreement that provides protection against the US enacting fresh domestic legislation.

The nature of our safeguards' provisions has also been contrasted with that of the China-US 123 Agreement. The Left Parties' Note has only cited Article 8(2) of the China-US Agreement, omitting any mention of the Memorandum of Understanding, dated 6 May 1998, between the two countries which provide for US personnel visiting the material, facilities and components subject to the Agreement annually and in special circumstances, making mutually acceptable arrangements for the addition or reduction of visits. The public testimony of ACDA Director Ken Adelman to the US Congress on 31 July 1985 is also relevant in this regard (see Annexure).

**1.8 Assertion:** In advancing the merits of the India – US Agreement, there is no mention of an overriding escape clause in Article 14.2, where termination is sought when resolution has not been possible or cannot be achieved through consultations. The questions of material violations arise only when violation of the Agreement is cited as reasons for termination under Article 14.3. The India-US 123 Agreement provides for open-ended right of termination by the US, by citing any reason it wishes. In contrast, the Japan-US 123 Agreement provides for cessation/termination only when there is non-compliance with the accord's provisions, arbitral tribunal's decisions or material breach of safeguards.

**Response:** It should be recognized that as an Agreement between two equal partners, both sides can invoke Article 14.2 in exceptional circumstances as warranted by their national interests.

As noted in the earlier Note, the India-US 123 Agreement has a multi-layered process of consultations dealing with the contingency of termination and cessation of

cooperation. No other 123 Agreement has a provision of the complexity and breadth of arrangements and processes that are contemplated in Article 14. The obligation to “consider carefully the circumstances” that may lead to cessation/termination is a significant commitment. So too is the Agreement to take into account circumstances resulting from a changed security environment and as a response to similar actions by other states impacting national security. Article 14.2 of the Agreement should therefore be read in its totality rather than have some of its provisions quoted selectively. The drafting of the Article has taken into account the broader implications of India having a strategic programme. It would be fallacious to contrast these aspects with the Japan – US 123 Agreement since Japan does not have a strategic programme.

**1.9 Assertion:** The argument that arbitration is inferior to consultations is difficult to understand. Government should explain how the 123 Agreement’s consultations clause is superior to the consultations clause of the 1963 Tarapur Agreement.

**Response:** India retains the right to ensure uninterrupted operation of its civilian nuclear reactors. Arbitration would only circumscribe our freedom of action and is not in our national interest.

We have learned from the Tarapur experience and Government has ensured that it will not be placed in a similar situation again. The consultations clause in the 123 Agreement (Article 13) differs from the 1963 Agreement, as now, the Agreement is between equal parties. It is explicitly recognized that they are between two states with advanced nuclear technology, which have agreed to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology. This is further buttressed by the consultations provisions of Article 14.2 of the 123 Agreement.



**1.10 Assertion:** The US will not, in the final analysis, allow its international law obligations to stand in the way of its perceived national interests.

**Response:** The Left Parties have stated that the US will not allow its international law obligations to stand in the way of its perceived national interests. They should be as confident of Government of India's ability to secure our national interest. After all, on nuclear issues, successive Indian Governments have resisted external pressures to accede to the NPT and the CTBT.

**1.11 Assertion:** President Bush may have treated Section 103 of the Hyde Act as non-binding in his Statement of Signing but future US Presidents may regard it as binding.

**Response:** Section 103 of the Hyde Act, which deals with Statements of Policy, is advisory in nature. The United States has a long history of Presidential Signing Statements. These are neither unique to the present Administration nor to the Hyde Act. In any case, as mentioned in paragraph 1.2 above, with the approval by the Congress of the 123 Agreement, the issue of binding and non-binding aspects of the Hyde Act on the Administration would be permanently settled. There need be no apprehension of future uncertainties on this score. While every legislature is sovereign, it is also customary for successor Governments to honour commitments made by their predecessors.

## 2. FUEL SUPPLY ASSURANCES

**2.1 Assertion:** Hyde Act has ignored all the fuel supply assurances made in the Separation Plan. Government is still not clear about the fuel supply assurances in the 123 Agreement, which it has itself negotiated. Several sections of the Hyde Act stand in the way of the fuel supply assurances. Hyde Act needs amendment before other NSG nations help us accumulate fuel reserves. The terms that other NSG countries would offer will have to take into account the Hyde Act.

**Response:** By its very nature as an enabling legislation, the Hyde Act is not required to include fuel supply assurances. The Act was meant only to exempt from certain requirements of the US Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India. The 123 Agreement, which was negotiated thereafter, included them *in toto*. This validates our contention that it is the 123 Agreement and not the Hyde Act that should be treated as governing the rights and obligations of the parties.

It is only after the adjustment of NSG guidelines takes place that the position of NSG countries on fuel reserves will become final. It is not clear how the Left Parties assumes that other NSG countries, who are all sovereign states, are bound by the Hyde Act. This is an enabling legislation applicable only to the US Administration. The question of it applying to NSG Governments, such as Russia or China, does not arise.

### 3. IAEA SAFEGUARDS AND ADDITIONAL PROTOCOL

**3.1 Assertion:** UPA's Note evades answering the nature of corrective measures. There does not seem to be any enforceable link between safeguards in perpetuity to be executed with IAEA and disruption of fuel supply.

**Response:** It would not only be difficult to define corrective measures without context or circumstances, but will be injudicious to do so. Any narrowing of the concept through arbitrary definition at this stage would diminish our flexibility of response. As regards the two issues of safeguards and fuel supply assurances, Article 5.6 and Article 10 of the 123 Agreement are self-explanatory. In fact, Article 10.2 specifically begins with the words "*Taking into account Article 5.6*" when committing to the conclusion of an IAEA Safeguards Agreement. The early conclusion of the India-specific Safeguards Agreement with the IAEA would further clarify matters. The Government has made clear that the application of safeguards on our civilian reactors would coincide with their receiving the benefits of international cooperation.

#### 4. SEPARATION PLAN OF 2 MARCH 2006

**4.1 Assertion:** UPA Note's claim that the Separation Plan is not a bilateral document is contradicted by PM's statement of 17 August 2007. Lack of reference to the Separation Plan in the 123 Agreement would allow future US Administrations to dispute its contents.

**Response:** There is no contradiction between PM's statement of 17 August 2006 and Government's view that Separation Plan is not a bilateral document. Agreement was indeed reached on 2 March 2006 on some aspects of the Separation Plan pertaining to fuel supply assurances as they involved US obligations. However, the principles of separation and the identification of civilian facilities were entirely our prerogative. It remains our view that key decisions on our nuclear programme should be made solely by India and that bringing them into the purview of a bilateral arrangement is not in the national interest.

#### 5. FULL NUCLEAR COOPERATION

**5.1 Assertion:** Sourcing dual use items is not possible for nuclear facilities and restrictions have not been lifted under the 123 Agreement. Sensitive nuclear technology transfers are also restricted and the US would vote against any move to do so in the NSG.

**Response:** As explained in the earlier UPA Note, the 123 Agreement meets all the benchmarks articulated by the Prime Minister in Parliament, i.e., nuclear fuel, nuclear reactors and reprocessing spent fuel. India is treated as other states with advanced nuclear technology. Over and above that, we have secured forward-looking language in Article 5.2. There are no legal impediments to the supply of dual use items. The 123 Agreement, even if it is read in a restrictive manner, cannot in any case apply to other NSG suppliers. Other suppliers have shown interest in concluding bilateral agreements on civilian nuclear energy cooperation with India once NSG Guidelines are adjusted.

## 6. ANNUAL CERTIFICATION/ASSESSMENT BY THE US PRESIDENT

**6.1 Assertion:** Certification has merely been changed by calling it an assessment. Future US Presidents could differ with the current one regarding the non-binding provisions of the Hyde Act.

**Response:** There is a major difference between a certification and an assessment. The absence of certification could constrain further cooperation and condition a waiver. That is not the case with assessments, which are an internal exercise between two branches of the US Government, without operational impact on the cooperating party. Such assessment requirements have existed well prior to the enactment of the Hyde Act. The issue of future Presidents reopening the interpretation of the Hyde Act has already been addressed in paragraph 1.10 above.

## 7. CONSENT TO REPROCESSING

**7.1 Assertion:** Section 6 (iii) of the 123 Agreement talks about “subsequent arrangements and procedures”. The claim of upfront consent is not borne out by Section 6 (iii) of the 123 Agreement. Government should explain how this is different from the earlier Tarapur Agreement.

**Response:** There is no reference to “subsequent arrangements or procedures” in Article 6 (iii) of the 123 Agreement. The consent rights secured in respect of reprocessing are regarded as ‘upfront’ because they do not envisage case by case approval of reprocessing requests. Taking the Tarapur experience into account, we have specified timelines to begin as well as conclude our discussions on the reprocessing arrangements. This represents a significant step forward.

## 8. ENERGY ISSUES

**8.1 Assertion:** The capital costs of imported reactor-based plants, which is almost three times that of equivalent capacity coal – fired plants, will need to be considered.

**Response:** The 123 Agreement is an enabling mechanism for bilateral cooperation in civilian nuclear energy. It does not oblige us to invest in nuclear power projects, if they are not cost effective.

It is true that capital cost of electricity generating plants is important, but the most important aspect is the tariff to be paid by the consumers. In this regard, several studies carried out by analysts in India and abroad have clearly brought out the competitiveness of nuclear power. Such studies, analysed by the CEA, have concluded that there is a clear confidence in the economic competitiveness of new nuclear builds in liberalized electricity markets, as well as in the economic affordability of the benefits, from a sustainable development perspective, brought by the reprocessing and recycling fuel cycle strategy (compared with the open once-through fuel cycle option).

**8.2 Assertion:** The UPA Note is silent on the Integrated Energy Policy of the Planning Commission and there needs to be an informed debate on different energy scenarios.

**Response:** The report of the Planning Commission on the Integrated Energy Policy was issued in August 2006 and at that point of time opening up of international civil nuclear cooperation with India was emerging as a distinct possibility. Therefore, on page 35, the Report says, "It is also envisaged that in the first stage of the programme, capacity addition will be supplemented by electricity generation through light water reactors, initially through import of technology but with the longer term objective of indigenization". The XI plan proposals of the DAE consider launching construction of 10 large reactors during the XI plan.

**8.3 Assertion:** Talk of a renaissance in nuclear power is speculative.

**Response:** There is a clear demonstration of resurgence of interest in nuclear power globally. In his speech to the General Conference at the IAEA on 17 September 2007, IAEA

Director General stated the following: *“Most of the recent expansion has been centred in Asia. Countries such as Indonesia, Thailand and Vietnam have concrete plans or have expressed their intent to introduce nuclear power – and plans for expanding existing nuclear power programmes are being implemented in China, India, Japan, the Republic of Korea and Pakistan. And of course, this renewed interest is not limited to Asia. Other countries, such as Algeria, Belarus, Egypt, the Islamic Republic of Iran, Jordan, the Libyan Arab Jamahiriya, Nigeria, Turkey and Yemen are among those considering or moving forward with the infrastructure needed to introduce nuclear power programmes. And many others, such as Argentina, Bulgaria, Finland, France, South Africa the Russian Federation and the United States of America, are working to add new reactors to their existing programmes.”*

There are definite indications of the likely start of construction in the United States in the near future. The status of new nuclear power plants in the USA is available on the website of Nuclear Energy Institute.\* It may be worthwhile recalling that in March 2007, Exelon was awarded the first Early Site Permit (ESP) for this Clinton plant in Illinois, by the USNRC and the USNRC decided to award the second early site permit to Entergy for its Grand Gulf site. Further ESP applications are pending with the USNRC. This indicates a clear movement towards setting up of new nuclear power plants in the United States.

**8.4 Assertion:** Decarbonising of the economy using nuclear power is not a serious option.

**Response:** Decarbonising of economy using nuclear power is a slow process. Massive expansion of electricity will take place only in developing countries where initial introduction of nuclear power has to be preceded by building up of human resource and infrastructure needed for operation

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\* See link: <http://www.nei.org/resourcesandstats/documentlibrary/newplants/graphicsandcharts/newnuclearplantstatus/>

and management of nuclear power plants. Therefore, with regard to decarbonising one has to see the impact of nuclear power over a longer-term horizon.

## 9. IMPACT OF IMPORTED REACTORS ON DOMESTIC INDUSTRY

**9.1 Assertion:** UPA Note has not addressed the issue of domestic sourcing for the new power plants. We would be helping to revive the moribund nuclear industry in the US and elsewhere.

**Response:** Manufacturing capability of Indian industry is much more advanced as compared to what it was in the 60s, when decision to launch nuclear power programme based on Pressurized Heavy Water Reactors was taken. Now it is within the capability of Indian industry to manufacture several equipment and component for light water reactors. As we proceed with setting up of light water reactors, progressive indigenization will be our goal as this will make the reactors much more competitive. We expect that opening up of international nuclear cooperation with India will not only provide an opportunity to Indian industry to manufacture components and equipment for light water reactors to be set up in India but also to provide similar manufacturing services for setting up of reactors abroad. Manufacturing industry in India has been exploring all such possibilities with their counterparts abroad and has discussed their blueprints with NPCIL and the DAE. This is similar to outsourcing of manufacturing by advanced countries to India in other sectors, such as automobile industry.

It may be recalled that India is having a dialogue with the Russian Federation and France. As a result of the dialogue with the Russian Federation, a Memorandum of Intent for setting up additional reactors at Kudankulam and new sites was signed on 25 January 2007. A declaration by India and France on the development of nuclear energy for peaceful purposes was signed in February 2006 and this declaration envisages cooperation to cover “application of nuclear energy

to power generation, including setting up of power projects”. Thus, the NPCIL’s projection of reaching 40,000 MWe of nuclear power by 2021 – 22 is based on several parallel efforts viz. indigenous PHWRs and FBRs, and reactors to be set up in technical cooperation with France, Russian Federation and the USA. Even if there has been no construction of nuclear power plants in the United States itself, it would be erroneous to regard nuclear industry, particularly in countries like France, Russia or Japan as moribund.

#### 10. COST OF ENERGY FROM VARIOUS SOURCES

**10.1 Assertion:** The UPA Note refers to historical costs that are not relevant to evaluating energy options today. The key issue is to compare the cost of latest nuclear and coal fired power plants. How do high-cost imported reactors fit into our indigenous programme and do they endanger the economy?

**Response:** Norms for fixing tariff of electricity from nuclear power plants in India have been continuously evolving. In the initial development phases, norms for fixing tariff were based on single part tariff, a base capacity factor of 62.8 per cent, and levies for research and development, renovation and modernization. Later, the policy was revised and base capacity factor was increased to 68.5 per cent and the levies on research and development, renovation and modernization were withdrawn. This change in norms has made the tariff of electricity from nuclear power plants more competitive.

A high level tariff committee is presently studying the tariff policy afresh. It is likely that in the coming years, when the present mismatch of fuel demand and supply is overcome, the tariff policy would shift to two part tariff concept as applied in coal fired plants. This will result into tariff as attractive as thermal plants.

The policy on tariff for light water reactor is also being worked out. It is quite likely that two part tariff concept identical to the coal fired units will be applicable to such



nuclear power plants right from the initial stage itself. For example at Kudankulam, when the project gets complete on finished cost of Rs. 13,171 crores (\$ 1570/kWe), the tariff on this basis is expected to be Rs. 1.99 in the year 2008-09.

With regard to capital costs, the overnight costs of commercial nuclear power reactors in the world vary from 1200 to 2500 US \$/kWe. There are no international numbers available for the cost/kWe for the various types of reactors available viz. AP-1000, EPR-1650, BN-1000, ABWR, ACR-1000 etc. The total cost will depend on the business model, participating organization/country, mode of implementation i.e. turnkey/technical cooperation, indigenous content and the innovative financial schemes. Foreign vendors mostly provide Nuclear Steam Supply (NSS Island). The Generating Plant, Balance of Plant and integration of these three islands (NSS, GP & BOP) is normally offered through a consortium. The cost towards construction and commissioning (local activities) form a sizeable portion of about 40 per cent of the total cost. By judicious choice in finalizing participating countries and the share of Indian industry (localization), a project costing between 1400 to 1500 \$/kWe can be conceived. A base case of overnight costs of 1500 US\$/kWe is considered possible. Though the capital costs are higher than thermal power stations, the imported reactors produce electricity at competitive rates in view of low fuel charge which is estimated at about 55 Paise/kWh. The corresponding fuel charge at non pit head locating for a coal thermal power station is about Rs. 160/kWh.

## 11. SHORTAGE OF URANIUM

**11.1 Assertion:** Do we have enough uranium supplies for domestic PHWRs and are we importing fuel only for imported LWRs?

**Response:** For domestic planned PHWR programme, i.e. up to a total installed capacity of 10,000 MWe, we do have enough uranium in the country. However, if additional uranium is available to us from the international market we

need not limit the installed capacity to 10,000 MWe. We can import uranium and set up additional pressurized heavy water reactors.

## 12. SERIOUS LIMITATION PUT ON INDIGENOUS THREE-STAGE POWER PROGRAMME

**12.1 Assertion:** There is a major alternation to the Separation Plan in not using safeguarded plutonium from LWRs for the breeder which harms the indigenous breeder programme seriously.

**Response:** There is no change in the Government's position regarding placing fast breeder reactors under safeguards. As noted in paragraph 14 (ii) of the Separation Plan, India is not in a position to accept safeguards on PFBR and FBTR as they are at an R&D stage and technology will take time to mature. Where future reactors are concerned, the Government retains the sole right to determine such reactors as civilian, obviously taking all factors into account. As conveyed in the earlier UPA Note, we have no intention of placing current fast breeder reactors under safeguards. We will consider offering specific fast breeder reactors for safeguards only after technology has stabilized and we are ready to use plutonium recovered from spent fuel of foreign origin.

# Annexure

STATEMENT BY KENNETH L. ADELMAN  
DIRECTOR OF THE ARMS CONTROL AND DISARMAMENT  
AGENCY BEFORE THE HOUSE FOREIGN AFFAIRS  
COMMITTEE ON THE 1985 US-CHINA NUCLEAR  
COOPERATION AGREEMENT  
31 JULY 1985

I am pleased to appear before this distinguished Committee today to discuss the peaceful nuclear cooperation agreement between the United States and China—the first agreement with a nuclear-weapon state since the Nuclear Non-Proliferation Act.

Before addressing how this agreement advances important nonproliferation interests, I should place it into the broad picture of enhanced US-Chinese consultations on arms control. This type of consultation followed on the heels of the President's April 1984 visit to China. Soon thereafter, in the summer of 1984, I led a delegation of American officials to Beijing to concentrate on arms control. The Chinese reciprocated by having their arms control experts come here just last month.

Nonproliferation has been a key topic in this discussions with the Chinese. I explained to the Chinese that nonproliferation is one of the highest US priorities as well as the one area of arms control which has been perhaps the most successful. This agreement continues that record.

This Committee has, of course, already received ACDA's Nuclear Proliferation Assessment Statement on the agreement, which we provided to the President prior to his approval of the agreement. The prime question before you now—as before the President on July 23—is: “Does this new agreement

September 24, 2007

contribute to US nonproliferation efforts?” I believe the answer is a resounding “yes.” Why? Because our agreement with China helps ensure that they are part of the nonproliferation solution rather than part of the problem.

#### CHINA'S NONPROLIFERATION POLICY

During the 1960s and 1970s, China rejected nonproliferation norms. They actually portrayed proliferation in a favourable light by openly declaring that the spread of nuclear weapons around the globe would diminish the power of the United States and the Soviet Union and enhance the opportunities for revolution. China denied that a world of more nuclear-weapon states would enhance the risk of nuclear war.

China also undertook no international legal obligations and had no policy to require safeguards and other controls on its nuclear exports. This naturally quickened our concerns about Chinese actions that could help other countries acquire nuclear explosives. Clearly, herein lay the potential for great harm to global non-proliferation efforts in both word and deed. And, needless to tell this Committee, words are exceedingly important in this realm. They affect the strength of the international norms and standards upon which non-proliferation ultimately rests.

Against this background, the United States opened talks on peaceful nuclear cooperation with China—first in 1981 and then more intensively in 1983—with ACDA participating in all stages of the negotiations.

After 2 years of negotiations, an agreement was initialed during President Reagan's visit to China. It then became necessary to engage in further discussions with China to clarify matters related to implementation of its nuclear policies. We did not want to proceed until we were completely satisfied. We were willing to wait as long as need be. These discussions concluding successfully at the end of June.

Over these past 2 years, the Chinese Government has taken a number of important nonproliferation steps.

## Responses to Left Parties' Rejoinder

First, it made a pledge that it does “not engage in nuclear proliferation” nor does it “help other countries develop nuclear weapons.” The substance of this pledge has been reaffirmed several times by Chinese officials both abroad and within China. In fact, China’s sixth National People’s Congress made this policy a directive to all agencies of that large and complex government. As such, it constitutes a historic and positive change in China’s policies. It helps bolster rather than break down those critical norms and standards that comprise the nonproliferation regime.

Second, in January 1984, China joined the over 100 members of the International Atomic Energy Agency (IAEA), which plays such a critical role in international nonproliferation efforts. This was a necessary step in China’s evolution toward acceptance of the basic norms of nuclear supply.

Third, China adopted a policy of requiring IAEA safeguards on its nuclear exports to non-nuclear-weapons states. This, too, was a big plus. Not only could a supplier that did not accept this basic norm directly contribute to spreading uncontrolled nuclear equipment and material to potential nuclear-weapon states, it could also undermine the consensus of supplier countries that has been painstakingly constructed over the past decade.

Fourth, during our hours and hours of discussions, the Chinese have made it clear that they will implement their policies in a manner consistent with the basic nonproliferation practices we and other support so vigorously.

In the short span of 2 years, China has embraced non-proliferation policies and practices, which it had eschewed so vociferously for a quarter of a century. This clearly is a turnabout of historic significance in our efforts to prevent the spread of nuclear weapons. The Chinese are to be applauded for such a change of course.

We can take a measure of pride in this as well. For I believe that the lengthy discussions by the United States and other supplier nations with China, combined with the prospect

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of agreements for peaceful nuclear cooperation, contributed heavily to these Chinese actions.

#### PROTECTING US INTERESTS

We will, of course, watch Chinese practices closely to satisfy ourselves that China's actions are consistent with its words, with our expectations, and with our policies and laws. The Chinese know that. They know that nuclear cooperation with us rests on their strict adherence to basic nonproliferation practices discussed and clarified at such great length. The agreement before you rests on that foundation. It could rest on no other.

As presented in ACDA's Nuclear Proliferation Assessment Statement, all statutory requirements for such agreements have been fully met. Two issues that were subject to protracted negotiations are worth mentioning.

The agreement before you contains a provision for "mutually acceptable arrangements for exchanges of information and visits" in connection with transfers under its terms. This was done to help ensure that all the agreements' provisions will be scrupulously honored. The specifics of visits and information exchanges will be worked out with the Chinese before any licenses are issued for nuclear exports. *They will permit visits by US personnel to sites in China wherever our material or equipment, subject to this agreement, is located.*

The second issue concerns the right of prior approval over reprocessing of spent fuel subject to the agreement. The agreement notes that neither party contemplates reprocessing such material. In fact, activities of this kind are not likely to become an issue in China for at least 15 years. While the language dealing with this issue does differ from that in other agreements, *it is clear that China cannot reprocess without US approval.*

Other aspects of our assessment statement can be fully explained in response to your questions. Let me just add now that US interests are fully protected. This agreement includes

many written guarantees and controls to ensure that material, equipment, or technology supplied by the United States will not be misused.

If they are misused, or if China's nonproliferation policies do not live up to their pledges and to our expectations, we have clear recourse. We hope and expect that this agreement will lead to significant peaceful nuclear commerce with China—otherwise the President would not have sent it to you—but *the agreement is only an umbrella agreement. That is, it permits, but does not require, the export of any nuclear items. Thus, if Chinese behavior ever became inconsistent with our understandings, we would suspend the licensing of exports. The Chinese know that.*

#### CONCLUSION

China's recent nonproliferation steps are and will be critical to our mission of bolstering vital nonproliferation norms and standards. Our long talks with the Chinese, as well as the prospects of civil nuclear cooperation with the United States and other suppliers, contributed to these major improvements in China's nonproliferation policies. Further, as I said, the agreement will enhance our efforts to cooperate to strengthen nonproliferation norms and actions.

Thus, I believe this agreement is fully in US national interests. I trust that, after a through consideration of all the issues, you and the whole Congress will agree.

## **Left Parties**

# **A Rebuttal to the UPA's Response dated 24th September**

**October 5, 2007**

The purpose of this exchange is to clarify the issues and caution the UPA that an Agreement binding the country for the next 40 years must not be entered into without proper examination of all issues and clarity on what the Agreement entails. If there are differences on the interpretation of various clauses in the 123 Agreement and the implications of the Hyde Act, it is incumbent on all of us that these are clarified at this stage.

However, even after two sets of Notes and responses on both sides, as can be seen from below, there are a number of issues on which the Left Parties are unable to agree with the UPA's interpretation. It is in this context that the UPA should evaluate whether they should go ahead with this Agreement before clarifying these issues. It is in the interest of the country that we reach a consistent and clear position on these issues before entering into such a far-reaching agreement.

### **1. THE IMPACT OF US NATIONAL LAWS ON THE 123 AGREEMENT**

*1.1. Permanent Waiver and Recognition of India as a Nuclear Weapons State:* The UPA's 24<sup>th</sup> September response argues that the waiver provided in the Hyde Act is a permanent one, as it does not require to be renewed every



year. However, UPA's Note also admits that the waiver is a one-time waiver. There are two independent issues here. One is the one-time waiver, which refers to waiver regarding India's activities between 1978 and 2005 and whether this one time waiver can be considered as a permanent one. The other issue is whether there is an annual process of determination by which the US can terminate the Agreement, which has been dealt with in Clause 5 below.

*1.1.1. One-time Waiver and the Sunset Clause:* The UPA's response dated 17<sup>th</sup> September, 2007 had identified the sections 123, 128 and 129 of the US Atomic Energy Act, 1954 as relevant for the civilian cooperation agreement and stated that the Hyde Act gives "a *permanent waiver* in respect to the above provisions of the Atomic Energy Act" (Emphasis added). It is in this context that the Left's Response of 19<sup>th</sup> September 2007 had stated that it is not a permanent waiver.

The waiver under discussion is required as the Nuclear Non-proliferation Act (NNPA) passed in 1978 prohibits transfer of any nuclear materials to any non-nuclear weapons country (as defined by NPT) which has exploded a nuclear device or has violated other clauses of NNPA. The Hyde Act makes clear that this waiver *is not a permanent one and only a one-time waiver*. Any future nuclear test and other violations as defined in NNPA will attract the provision of sanctions and termination of the 123 Agreement. A permanent waiver would have meant that the clause of sanctions as defined in NNPA would have been lifted permanently and not as a one-time waiver.

The UPA Response has quoted the sunset clause in the Hyde Act [104(f)]. The sunset clause makes this one-time waiver issue amply clear. It states that the President's waiver authority under section 104(a)(1) to exempt a US-India nuclear cooperation agreement will expire once the 123 Agreement is enacted. The purpose of this provision is to ensure that the President can use this waiver authority only once.

*1.1.2. India Recognised as a Nuclear Weapons State:*

The Hyde Act categorically demands the termination of the nuclear cooperation between India and the United States in the event of a nuclear explosive test, vide Section 106: “A determination and any waiver under section 104 shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this title.” This clearly shows that India has *not* been recognised as a nuclear weapons state, implicitly or otherwise. This section, *inter alia*, also makes it evident that the Hyde Act does not offer a permanent waiver in relation to the application of Sections 128 and 129 of the Atomic Energy Act of the United States to India-US nuclear cooperation, both of which apply only to non-nuclear weapon states. Therefore, the application of US laws including the Hyde Act will recognise India as a non-nuclear weapon state. This has relevance to the way the safeguard and other regimes apply in the 123 Agreement as the earlier Notes by the Left Parties have argued.

*1.1.3. National Laws of the US that apply to 123 Agreement vide Section 2.1:* UPA’s Response dated 17<sup>th</sup> September identifies some sections of the US Atomic Energy Act which will apply to the 123 Agreement, namely section 123 read with sections 128 and 129. This does not appear to be a comprehensive list of domestic laws or sections of the Atomic Energy Act. For example, Section 131 of the Atomic Energy Act applies to the implementation of the 123 Agreement but is not mentioned. The Left Parties insist that a comprehensive list of domestic laws of the US that are applicable for the implementation of the 123 Agreement, should be framed. Without such a list and a thorough evaluation of the sections of these laws, the Government should not proceed further with the 123 Agreement.

*1.2. Hyde Act is of concern only to the US and not to India:* It is true that the Hyde Act is an internal US legislation.

But it becomes an integral part of the 123 Agreement through Article 2.1 that requires conformity with national laws. Therefore it is erroneous to claim that the Hyde Act is of concern only to the US and not to India. It is correct that once the 123 Agreement is approved by the US Congress it will have precedence over the Hyde Act, *but only to the extent that they conflict with each other and not where they do not conflict or cover the same ground*. Is it the UPA's contention that where the Hyde Act and the 123 do not conflict with or cover the same ground, the Hyde Act provisions will not apply on the US Administration?

The bridge to the Hyde Act is provided by the Preamble to the 123 Agreement. It may be mentioned here that the Preamble to the 123 Agreement states that the Agreement is "*desirous of strengthening the strategic partnership between them*". This preambular statement can be used to lend a certain colour and tone to the interpretation of the 123 Agreement. The 123 Agreement is to be interpreted in accordance with rules of interpretation in international law. Article 31 of the Vienna Convention on the Law of Treaties notes the general rule of interpretation: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Article 31 (2) notes that "the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, *including its Preamble. . .*". Therefore the Preamble can always be taken cognizance of in the act of interpretation. The point is also dealt with in 1.5 below.

1.3. *Hyde Act does not apply to India*: There is no need for the US to breach the Hyde Act for it is an integral part of the 123 Agreement through the terms of Article 2.1. It is inconsequential that the Hyde Act does not apply directly to India. For the Hyde Act continues to frame the obligations of the US through the reference to national laws in Article 2.1 of the Agreement.

The UPA's response quotes the US Assistant Secretary of State to suggest that the 123 Agreement is a deal between US and India. However, in the same briefing that the UPA's response refers to, Mr. Richard Boucher had also stated: "We have met all requirements of the Hyde Act. The 123 Agreement is in conformity with the Hyde Act". In response to a specific question whether the 123 Agreement superseded the Hyde Act, Mr. Boucher further stated: "I don't think that's a meaningful statement one way or the other".

*1.4. On matters that 123 Agreement is silent, the Hyde Act will not bind the US actions:* The implementation of the 123 Agreement cannot neglect the provisions of the Hyde Act, because Article 2.1 specifically provides that the 123 Agreement will be in accordance with the respective national laws of the parties to the Agreement. The UPA's 24<sup>th</sup> September response on the issue of Hyde Act binding the US Administration on matters that are not mentioned in the 123 Agreement is that the Hyde Act is an enabling legislation and not the implementing mechanism. The response seems to imply that since the Hyde Act is not the implementing mechanism, therefore the US actions in the civilian nuclear agreement are not going to be bound by it.

The key issue here is that as an enabling mechanism exempting the civilian nuclear agreement from certain provisions of the US Atomic Energy Act of 1954, the Hyde Act has also defined limits of the 123 Agreement. It has also set up various reporting and oversight mechanisms. It has prescribed what the US must do in the NSG negotiations so that India can not get more favourable terms from the NSG than what the US has given. Finally, it has not only defined the conditions for termination of the Agreement if India violates what the US Congress considers as Indian commitments, but also what the US administration should do if the Agreement is terminated. All these provisions of the Hyde Act are not in conflict with the 123 Agreement. Therefore the UPA's response that the Hyde Act is either not

binding on India or is overridden by the 123 Agreement is not relevant. The Left Parties' Note had stated: "In this regard it may be noted that to the extent the provisions of the Hyde Act do not conflict with or cover the same ground as the 123 Agreement, even the explicit adoption of the latter by the US Congress will keep those provisions alive." The UPA's response has evaded this issue.

*1.5. The Vienna Convention, the Law of Treaties and Domestic Laws:* The UPA's response of 24<sup>th</sup> September does not appreciate the difference between a situation when domestic legislation is to be brought in conformity with international agreements and a situation when an international agreement is to be implemented in accordance with national laws. To take an example of the former, Article 16 (4) of the Marrakesh Agreement Establishing the World Trade Organization explicitly states: "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements". (The annexed Agreements contain all the multilateral Agreements on Trade in Goods, General Agreement on Trade in Services, Agreement on Trade-related Intellectual Property Rights, etc.). There is no such provision requiring the US to bring its domestic laws in conformity with the 123 Agreement. Indeed, to the contrary, it states that the 123 Agreement will be implemented in accordance with national laws and international treaties.

The UPA's response also states that in the case of an international treaty, domestic laws have to be brought in consonance with international obligations. As we note above, this does not happen automatically and has to be done explicitly. On the Fuel Supply Assurance, the 123 Agreement does explicitly mention that the US domestic laws would be amended for this purpose. The question which the Left Parties' Note dated 19<sup>th</sup> September 2007 had raised, is what are the specific domestic laws of the US and their provisions that need to be amended to bring them in consonance with the

fuel supply obligations under the 123 Agreement? The UPA's response does not answer that question. In view of the vital nature of the fuel supply assurance, any ambiguity of this kind even at this stage does not speak well of the Government's homework regarding the 123 Agreement.

The Left Parties' Notes, dated 14<sup>th</sup> September and 19<sup>th</sup> September had specifically asked, what are the international treaties that are referred to in Section 2.1. Again there has been no response to this in the UPA's Note. The Government must surely be aware of the international treaties in accordance with which the 123 Agreement will be implemented. Therefore, not furnishing this list appears inexplicable. And if the Government is *not* aware of the international treaties referred to in Article 2.1 of the 123 Agreement, then this has to be clarified before proceeding further.

*1.6. India and China 123 Agreements:* The UPA's Note dated 17<sup>th</sup> September had claimed that the India-US 123 Agreement is superior to the China-US 123 Agreement. The Left Parties' response dated 19<sup>th</sup> September 2007 had cited just one instance, comparing the two 123 Agreements, to question that claim. The 1998 MOU between China and the US that the UPA's response refers to was signed 13 years after the 123 Agreement and not as a part of the 123 Agreement. It is in the nature of a subsequent arrangement that operationalises the relevant part of the Agreement. However, the provision for "mutually acceptable arrangements" for exchanges of information and visits to "material, facilities and components", that the UPA response of 24<sup>th</sup> September refers to in the MOU *are in lieu of bilateral safeguards*.

The Article 8(2) of the China-US Agreement is reproduced below:

The parties recognize that this cooperation in the peaceful uses of nuclear energy is between two nuclear-weapon states and that bilateral safeguards are not

required. In order to exchange experience, strengthen technical cooperation between the parties, ensure that the provisions of this Agreement are effectively carried out, and enhance a stable, reliable, and predictable nuclear cooperation relationship, in connection with transfers of material, facilities and components under this Agreement the parties will use diplomatic channels to establish mutually acceptable arrangements for exchanges of information and visits to material, facilities and components subject to this Agreement.

A detailed examination of the 1998 MOU will also show that these are not safeguards but merely visits and cannot compare either in scope or in depth to IAEA safeguards that India will have to negotiate or even bilateral safeguards.

Unlike the India-US 123 Agreement, there is also no provision for IAEA safeguards or any other safeguards in the China-US 123 Agreement. There are also other differences between the India-US and the China-US 123 Agreements. As China is recognised by the US as a nuclear weapons power, there is no clause for return of materials on termination/cessation of the agreement in China's case as exists in India's 123 Agreement.

The provisions in the China-US Agreement and the India-US Agreement regarding compatibility with national laws are not comparable. The China-US Agreement clearly states that a party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty". The India-US 123 Agreement states precisely the opposite by allowing the Agreement to be implemented in accordance with national laws. The mention of the principles of international law in Article 16.4 of the India-US 123 Agreement has no bearing on this matter. Indeed, if anything, the principle of international law requiring treaties to be observed in good faith (which is explicitly stated in Article 16.4), achieves the opposite result. The provisions of the Agreement have to be interpreted in accordance with the principles of

interpretation contained in Articles 31 and 32 of the Vienna Convention of the Law of Treaties which can exclude the interpretation offered in the UPA Note.

*1.7. Termination Clause and Consultations:* The UPA's response essentially confirms that the US can terminate the agreement without consultations if it so desires. This is vide Article 14.2 of the 123 Agreement which states: "The Party seeking termination has the right to cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations". That they also may go through a detailed process of consultations and carefully consider various issues, does not detract from this central point raised in the Left Parties' notes.

*1.8. Arbitration versus Consultation:* The provisions of consultations and arbitration are not mutually exclusive. All forms of dispute settlement should be provided for. For instance, the WTO Agreements provide all possible alternatives from consultations to arbitration.

The UPA's response while dealing with the question regarding the Tarapur 123 Agreement and in what respects the present 123 Agreement differs from it, talks of the present Agreement being between two equal parties and the consultations clause. The Tarapur Agreement showed that the US, as a supplier, could not be bound by the provisions of the 123 Agreement regarding supply of fuel. Since the issue in the current 123 Agreement is also how we can bind the US, as a supplier, to the provisions of this Agreement, the UPA's answer is essentially the consultations clause. We have already pointed out the limitations of the consultations clause in 1.8 above, namely Article 14.2 of the 123 Agreement.

*1.9. International Law Obligations and the US:* It is one thing for India to resist signing or ratifying a treaty and entirely another matter to get the US to abide by its obligations under



the 123 Agreement. One situation is entirely in the hands of the Government of India and the other outside its purview. The UPA's responses show that the Government does not seem to recognize that given the wordings of the 123 Agreement, as the Left Parties have pointed out, the US can advance a strong legal case to justify the violation of obligations if feels its national interests are not being served by the 123 Agreement. It is this ambiguous nature of the provisions binding the US to respect vital requirements of India's, such as fuel supply, that makes it possible for the US to escape from its obligations if it so wants.

In recent years this is the general predisposition of the US, as Professor Vagts (Professor Emeritus at Harvard Law School) points out:

The commitment of the United States to its treaty obligations has recently been put in question... What is especially unsettling is the change in the style of verbalization that has accompanied these breaches. In the past, the courts and the political branches consistently acknowledged that on a different plane treaties are binding upon the United States and that, if the United States breaches one, it has an obligation to set the matter straight. In recent years, however, the executive, Congress, the courts, and influential commentators have each conspicuously verbalized the idea that the later-in-time rule is the final answer and that the binding effect of international law carries little weight.

One author has interpreted this "later-in-time rule" under which later statutes may override treaty provisions as expressing "a clear disregard for the *pacta sunt servanda* rule" [Pierre Klein, "The effects of US predominance on the elaboration of treaty regimes and on the evolution of the law of treaties", in Michael Byers and George Nolte eds., *United States Hegemony and the Foundations of International Law*, Cambridge University Press, Cambridge, 2003, p. 386].

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There are other examples of the US not respecting international laws and claiming the superiority of its national laws. The US quitting the jurisdiction of the International Court of Justice after the verdict of the ICJ went against it on Nicaragua is a pointer to this.

1.10. *President Bush and binding/ non-binding sections of the Hyde Act:* The UPA's response accepts that there is nothing that obliges a subsequent US President to follow President Bush's position on the Signing Statements. The UPA has not stated its understanding of the implications of a future US President not agreeing to President Bush's understanding of what is binding and not binding on the US. Should India be bound for 40 years on the premise of continued goodwill of US Presidents for this entire period?

## 2. FUEL SUPPLY ASSURANCE

The Left Parties' notes had raised the issue that the 123 Agreement is still talking about amending the US domestic laws (Clause 5.6). To repeat, the specific clause reads:

As part of its implementation of the July 18, 2005, Joint Statement the United States is committed to seeking *agreement from the US Congress to amend its domestic laws* and to work with friends and allies to adjust the practices of the Nuclear Suppliers Group to create the necessary conditions for India to obtain full access to the international fuel market, including reliable, uninterrupted and continual access to fuel supplies from firms in several nations. (Emphasis added.)

The question here is what are the future amendments that the US will bring about in the Congress apart from the 123 Agreement? Which are the domestic laws where these amendments will be introduced? Is Hyde Act one of these laws? Till date, no clarification has been furnished on the above. On the face of it, it appears that the fuel supply

assurance in the 123 Agreement is conditional on future amendments to US laws. As the US Congress has already rejected giving fuel supply assurances except for market failures, to expect the US Congress to change its position in the future and base our course on such expectations seems to be a dangerous way to conduct the affairs of the country.

The other question that the Left had raised is whether the fuel supply assurance will hold good if the Agreement itself is terminated. Again, no answer has been given to this in the UPA's responses. The UPA's response misrepresents the Left Parties' argument as suggesting that the other NSG nations are bound by the Hyde Act. The Hyde Act Joint Explanatory Statement of the Committee of Conference was cited in the Left's Note to show what US policy would be in the NSG. The US can enforce its will on the NSG, as all NSG decisions have to be a consensus. The US can ensure that no extra beneficial terms are provided to India by any other NSG member-state while relaxing the NSG Guidelines. Further, as the US is supposed to present India's case to NSG, it is unlikely to present terms in the NSG that are commercially prejudicial to itself. Therefore, proceeding with this Agreement on the basis of securing better terms from the NSG is not a tenable proposition.

### 3. IAEA SAFEGUARDS

The UPA's response dated 24<sup>th</sup> September claims that there is symmetry between safeguards and fuel assurances as can be seen from Art. 5.6 and Art. 10. That *it is not so* can be seen from Art. 16.3 and Art. 5.6 (c) of the 123 Agreement (which deals with IAEA safeguards), which will continue to be valid even after the termination of the Agreement (together with Art. 6, 7, 8, 9, 10, 15). However this does not apply to the specific assurance of fuel supply that is contained in Art. 5.6(a) and Art. 5.6(b).

### 4. FULL NUCLEAR CO-OPERATION

The UPA's response of 24<sup>th</sup> September essentially

confirms the Left's argument that restrictions on sensitive technology and dual use technology have not been lifted and all that we have secured is "forward looking language". Language is no substitute for actual measures required to lift the technology sanctions, which has been advanced as the *raison d' être* for the Agreement.

The UPA's response also states that "there are no legal impediments to the supply of dual-use items." This is indeed a strange assertion, as the technology control regimes are well known and there are legal impediments to import of such dual use items. Is it UPA's contention that all the technology control regimes – like the NSG and MTCR – are not restricting India's import of dual use items for the nuclear and space sectors? Dual use items require a lengthy and cumbersome procedure to satisfy the relevant regulatory authorities in the United States with the assurances and verification provided by the importing nation to guarantee that it would be used only for the stated non-nuclear or non-missile purposes. However the satisfaction of the relevant regulatory authority was never to be easily had *in practice* and this was the source of great difficulties in the acquisition of relevant scientific and technological materials even for non-nuclear uses.

There is also another category of institutions ('entities' in the language of the Bureau of the US Department of Commerce) in India, consisting of the key organisations under the Departments of Atomic Energy, Space and Defence, that face much stricter controls when they are required to import any of these dual-use items. These entities will also continue to face dual-use sanctions because of their direct connection to enrichment, reprocessing and heavy water technology or to launch vehicle and missile technology. The continuation of restrictions on dual use technologies on the new safeguarded reprocessing facility and civilian fast breeder reactors would have serious consequences. This is what the Left's notes had cautioned the UPA on. The response of the UPA on this shows a casual approach, which it is hoped is

only in its response to the Left Parties' notes, and not reflected at the actual policy level. If a similar lack of application of mind takes place also in the realm of policies, the country will have to pay a very heavy price indeed in the future.

#### 5. ANNUAL CERTIFICATION/ASSESSMENT

The operative content – what the President is expected to furnish every year to the Congress - remains the same even if it has been changed from Certification to Reporting/Assessment. The US Congress can still act on the basis of these reports. The Joint Conference Explanatory Statement makes clear that the annual reporting requirement was introduced in order to monitor continued implementation of India's commitments as understood by the US Congress.

The conferees believe that India's *continued implementation* of those commitments is central to the integrity of our bilateral relationship. Therefore, the bill contains reporting requirements and a provision that calls for *termination of exports* in the event of violations of certain commitments. In addition, the bill seeks to uphold existing statutory congressional oversight of US nuclear cooperation and exports. (emphasis added)

The Hyde Act also has specific provisions in the Reporting section, that the Report will contain “whether it is in the US security interest to continue with nuclear commerce” [104(g)(2) D (ii)(IV)] in case India does not comply with its commitments and obligations, one of which is working with the US to deny Iran the fuel cycle. Therefore, the Reporting/Assessment section of the Hyde Act is not an innocuous requirement as is being made out to be in the UPA Response.

#### 6. REPROCESSING

On the question of reprocessing, is it the UPA's contention that the arrangements and procedures mentioned in the 123

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Agreement are *not subsequent* to the Agreement or that the word *subsequent* is not there in the text? The substantive issue is whether the “arrangements and procedures” are subsequent to the 123 Agreement or not. It is clear that the “arrangements and procedures” are subsequent from on-the-record briefing of July 27, 2007 of Deputy Secretary of State, Nicholas Burns. He states: “Our two countries will also *subsequently* agree on a set of arrangements and procedures under which reprocessing will take place. And for those of you who are steeped in this, you know that that’s called for by Section 131 of the Atomic Energy Act of 1954.” (emphasis added). Clarifying the matter further in response to a question he again stated: “...Section 131 of the Atomic Energy Act, of course, calls for *subsequent* arrangements in reprocessing, arrangements in procedures that would need to be *agreed upon before the reprocessing could actually take place.*” (emphasis added)

Therefore, the Left’s contention that the reprocessing consent is only notional at this stage remains valid. It is not very different from the Tarapur 123 Agreement. It is more a consent to reach an agreement in the future on reprocessing, which may or may not be reached. The arrangements and procedures noted above have to be under Section 131 of the US Atomic Energy Act and will also need Congressional approval. This may be contrasted to the 123 Agreements with Japan and Euratom, which have prior consents for reprocessing *along with pre-approved activities*. In the US-Japan nuclear cooperation, both the 123 Agreement and the subsequent arrangement, that identified current and future reprocessing facilities, were offered for US Congressional consideration at the same time – a one-step process. Why has the Government chosen to keep the question of a new reprocessing facility and related technological options open to a later unspecified date instead of securing an immediate subsequent arrangement; i.e. why has it chosen a two-step process rather than a one-step one?

## 7. ENERGY ISSUES

7.1. *Capital costs of imported nuclear reactors:* The UPA's response dated 24th September states that although the capital costs of nuclear plants are higher, CEA analysis of studies by analysts in India and abroad, have concluded that nuclear power is competitive. Again, no details are provided regarding either the studies referred here or about CEA's analysis. The Left's Notes of 10<sup>th</sup> September and 17<sup>th</sup> September had asked for the studies which have been used as the basis for considering 40,000 MW of nuclear energy by 2020, that too largely using imported reactors. Before committing the country to a route with such large numbers of imported reactors, the minimum that we expect from any Government is such detailed and transparent analysis of the pros and cons of various sources of energy. It is the first time after Enron that, the fuel mix of the country is being determined with no public discussions of various options and their costs. During the Enron days also, a similar ill thought-out liquid fuel policy for 12,000 MW was promoted, leading to very high costs from such plants.

7.2. *Lack of Sufficient Study and Techno-economic analysis:* The Left's Note of 17<sup>th</sup> September had stated that the only detailed study on techno-economics and fuel availability for meeting future energy needs was that of the Planning Commission's "Integrated Energy Policy". The UPA's Note has responded by stating that this document was drawn up in 2006 and had kept open the possibility of international co-operation on nuclear energy. This does not address the issue. The Left's Note wanted to know whether with the new scenario in mind, either the Planning Commission or any other body had done a similar exercise? The Planning Commission's study above had considered 11 different scenarios and was quite comprehensive. If it needs changes or modifications, there can be no quarrel with that. But can it be thrown out of the window now in order to promote 40,000 MW of power to be generated through imported reactors *without any*

*corresponding studies?* That DAE has proposed 10 reactors for the 11<sup>th</sup> Plan, as the UPA's response states, again misses the point that we need alternate options to be evaluated by a *planning agency* before deciding on our future energy mix. Therefore, the questions regarding the quantum of capital needed for the electricity sector, what should be the fuel mix and energy mix and an evaluation of the future energy basket still remain unanswered.

7.3. *Nuclear Renaissance:* The UPA's response essentially confirms that no new nuclear plant in the US has received license or has started construction. No new commercial reactor has come on line since May 1996, when Watts Barr Unit 1 came into operation. It took 23 years to build. The Early Site Permit for the two new plants that the UPA's response talks about can take anything from 2 to 20 years to receive a license. After the Early Site Permit, the party concerned still needs to seek a license from the NRC to build and operate a reactor. Therefore, the Early Site Permits mean very little.

Similarly, very few new reactors are being constructed in Western Europe, where many countries are phasing out their nuclear plants or not building any replacement plants. Only France and Finland are building one new reactor each. India, China and Russia account for more than 50 per cent of the 34 reactors currently under construction. This, in our view, does not constitute a nuclear renaissance as claimed by the Government.

We do believe that nuclear energy as an option should be kept open and some investments made in this sector to support our domestic PHWR, FBR and thorium based AWR technology. The major manufacturers in the US and Western Europe are facing a shrinkage of their home market. GE and Westinghouse are surviving exclusively on foreign orders and are of course very keen to expand their market. Similarly, Areva NP, the French company, is largely dependent on sales outside Western Europe. Therefore, if we compare the nuclear



industry now to its heydays, it is indeed in a moribund state. In fact it is because of the need to rescue these nuclear manufacturers that their Governments are creating this hype of a nuclear renaissance, hoping to get countries such as India to invest in large numbers of such plants.

7.4. *Decarbonising the economy*: We give below from the IPCC Working Group III Report “Mitigation of Climate Change”, *Summary for Policy Makers*, its view on the impact of nuclear energy for de-carbonising the economy:

Given costs relative to other supply options, nuclear power, which accounted for 16 per cent of the electricity supply in 2005, can have an 18 per cent share of the total electricity supply in 2030 at carbon prices up to 50 US\$/tCO<sub>2</sub>-eq, but safety, weapons proliferation and waste remain as constraints.

The impact of de-carbonising the economy, using nuclear energy in a big way will at best lead to a 2 per cent benefit in electricity terms by 2030, even assuming a high carbon price. If we reduce it to actual greenhouse gas reduction, it is of the order of 1 per cent. While it does remain an option for the long-term, it is not a major greenhouse gas mitigation strategy for the short or medium term. In fact, with the recent discoveries of gas in large quantities in India, using gas for power generation would reduce greenhouse gases from power generation more effectively.

Even for India, the ambitious nuclear energy route will increase the share of nuclear energy from 5 per cent to at best 9 per cent. This constitutes a 4 per cent reduction in terms of greenhouse gases from electricity and only about 2 per cent if we take the total greenhouse gas emissions from India. Therefore, greenhouse gas emissions reduction cannot be a major argument for civilian nuclear power for the short and medium term.

This once again brings out the need for a comprehensive

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look at the techno-economics of our energy options taking also greenhouse gas reduction into account. This is what the Left has been arguing, that we need these studies before making up our mind on the quantum of nuclear energy we need and the strategy to be followed. Instead, what we seem to have is a strategy that has been already decided on extraneous considerations and is now being supported by dubious arguments regarding energy needs and greenhouse gases.

#### **8. Impact of Imported Reactors on Domestic Industry:**

The UPA's response dated 24th September argues that the imported reactors will be progressively indigenised by Indian industry. This still does not address the issues that we had raised. The issues are that Indian scientists and engineers have already scaled up the PHWR technology to 540 MW and have designs to scale it up to 700 MW. This is already indigenised. Comparable imported reactors will not only lead to outflows of foreign exchange but also manufacture and jobs. They are also about 50 per cent higher in costs to corresponding Indian reactors. The argument that the imported reactors will be progressively indigenised does not explain why higher cost reactors which will have to be completely imported at least in the initial phase are being considered when equivalent indigenous reactors are available at much lower costs.

Regarding the relationship between manufacturing reactors and creation of jobs, we quote below Condoleezza Rice, "Our Opportunity With India," *Washington Post*, March 13, 2006:

. . . our agreement is good for American jobs, because it opens the door to civilian nuclear trade and cooperation between our nations. India plans to import eight nuclear reactors by 2012. If US companies win just two of those reactor contracts, it will mean thousands of new jobs for American workers.

## Left Rebuttal to UPA's Response

If importing two reactors from the US means thousands of jobs in the US, surely manufacturing them here would similarly create jobs and opportunities here. This is why the Government's plan to import most of the 40,000 MW nuclear plant capacity is against our national interest. This is apart from the issue of imported Light Water Reactors introducing energy dependence through imported fuel.

### 9. COST OF ENERGY FROM VARIOUS SOURCES

Nuclear Power Corporation's Chairman and Managing Director, Mr. V.K. Chaturvedi had stated in the joint press conference at the time of the inception of the Kudankulam project that power generated from it was likely to cost between Rs. 3.50 and Rs. 3.75 a unit. This was based on a capital cost estimated at that time to be Rs. 7 crore per MW. The total project cost was estimated to be Rs.14,000 crore with 50 per cent being met by soft loans from Russia at 4 per cent interest (From *Volga to Ganga: The Story of Kudankulam*, AI Siddiqui, *NuPower* - Vol. 16 No. 1-2, 2002). In spite of this, the cost per unit was then estimated to be Rs.3.50-3.75 even after considering the low rate of interest. Somehow, this has now dropped to Rs. 1.99 in the UPA Note! Neither has this figure been backed by any calculations nor any break-up of costs.

We give below the tabulated figures for Kaiga Atomic Power Station as computed by NPC originally and the final computed figures.

Components of Tariff	Originally computed by NPC paise/kWh	Final Figures paise/kWh
Return on equity	117.45	86.40
Interest on Govt. Loan	10.77	10.57
Interest on market borrowings	54.32	53.27
Interest on working capital	21.70	18.97
Depreciation	110.11	51.84
Fuel Consumption	48.06	47.14
Heavy water lease	50.55	49.58

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Heavy water makeup	16.85	16.53
O&M Cost	35.85	35.16
R&D levy	3.00	3.00
Annual fuel recovery charge	3.21	3.15
Provisioning for decommissioning	2.00	2.00
R&M levy	5.00	
<b>Total Tariff</b>	<b>478.89</b>	<b>382.60</b>

Even though the tariff — composite and not two part — arrived at was 382.60 paise/unit, it was further negotiated and fixed as follows, for the five year block from the date of commercial operation, i.e., from 2001:

Yr. 1	295 paise/unit
Yr. 2	310 paise/unit
Yr. 3	325 paise/unit
Yr. 4	340 paise/unit
Yr. 5	350 paise/unit

These figures are comparable to that of Kudankulam as originally stated by Mr. Chaturvedi and therefore it is difficult to accept the figures given in the UPA's response.

It is not very meaningful to compare the fuel cost of nuclear plants to the fuel cost of coal-fired plants, that too for locations far away from coal mines. The tariff from comparable coal fired plants (Ultra Mega Power Projects awarded recently) varies from Rs.1.19 for Sasan at pithead to Rs.2.26 paise for Mundra with imported coal. If we take the 500 MW unit sizes, the tariff from coal-fired units varies from Rs. 2.20 to 2.60 per unit. This is considerably lower than the tariff from nuclear plants. If we take the international price of imported reactors, considering market rates of interest, a debt equity ratio of 70:30 as in other commercial projects, all of which are unlike Kudankulam, the tariffs for imported reactors will be in the range of Rs. 4.60 to Rs. 5.00 per unit as we have indicated earlier.

This once again brings out the central point regarding

the techno-economics of nuclear power – that we need serious and comprehensive studies to substantiate the capital costs and tariff of imported nuclear plants. The Common Minimum Programme had incorporated the need for integrated energy planning, “An integrated energy policy linked with sustainable development will be put in place.” This, we believe, was the Integrated Energy Policy, 2006 of the Planning Commission. If we are to consider changing that, we need another study to carry out a similar exercise. This is needed for identifying our future energy needs and the mix of energy to meet these needs.

### 10. URANIUM SUPPLIES

The UPA's response of 24<sup>th</sup> September, accepts that domestic supplies of uranium are sufficient for the domestic PHWR programme for generation up to 10,000 MW and that uranium imports are needed only for power generation beyond this limit. However, if the FBR route is followed, there is no restriction on the 10,000 MW either and India can have a nuclear energy programme up to 350,000 MW without importing either uranium or using thorium. With thorium, there is no restriction in terms of fuel for nuclear energy.

If indeed there is no shortage of uranium fuel immediately, it is difficult to understand the need for import of uranium. It is in this context we had asked whether the Government or any agency had done a detailed study for the 40,000 MW programme, identifying capital requirements, tariff from such plants, requirements of fuel and reprocessing of imported fuel. This would have identified our actual requirements of imported fuel and the requirement of reprocessing for either PHWR/LWR or for the FBR programme. It is the absence of any concrete study on which this ad hoc 40,000 MW figure is based that is the cause for concern. This is further compounded by statements, as in the UPA's Response dated 17<sup>th</sup> September that “India has no intention to place fast breeder reactors under safeguards. The new reprocessing facility is not linked to India's breeder

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programme”. The UPA’s response of 24<sup>th</sup> September has stated a different position, saying: “(a)s conveyed in the earlier UPA Note, we have no intention of placing current fast breeder reactors under safeguards”. It does appear that the plan of 40,000 MW being talked about is without a serious exercise taking all aspects of the nuclear energy programme into account. The role of FBR in this is also not clear. A programme based on imported reactors and fuel does not seem to take into account that the nuclear suppliers’ cartel, though technically of 45 countries, is in effect a very narrow one. Therefore, dependence on imported fuel would be a deviation from the original three-phase path of nuclear energy development, and would be detrimental for future energy security.

**UPA**

## **Response to Left Parties'**

### **Rebuttal dated 5 October 2007**

**October 8, 2007**

1. **This is a negotiated agreement: A careful balance of obligations has been agreed upon.** Both sides are obliged to implement the provisions of the Agreement. There is no reason to apprehend that India will be locked in or constrained from exercising the right to give notice of termination, take corrective measures or seek consultations should there be difficulties in implementing the Agreement.

It is envisaged that the Agreement will result in benefits to the people of India while at the same time securing vital interests: the autonomy of our strategic programme, our indigenous research and development and India's 3-stage Nuclear programme.

The 123 Agreement was negotiated *after* the Hyde Act was passed. Provisions in the Hyde Act that could have had implications for the proposed terms of the co-operation have been carefully addressed in the operative Agreement.

**Query 1.1. Permanent waiver:** "The Hyde Act makes clear that this waiver is not a permanent one and only a one-time waiver. . . . A permanent waiver would have meant that the clause of sanctions as defined in NNPA would have been lifted permanently and not as a one time waiver."

**Response:** The waiver provided by the Hyde Act is permanent in that it is not limited by time and does not require renewal during the lifetime of the Agreement – nor is there a

requirement of periodic assessment or determination by the US for the continuation of the Agreement. In the context of India, the waiver means that the US can cooperate with India despite India having conducted a test, not having full scope safeguards and continuing to have a non-civilian nuclear programme. Should India conduct a test in future, which is our sovereign right, the US retains its right to impose sanctions. Just as we have a right to test, they have a right to respond.

**Query 1.1.2. India's status as a nuclear weapons state:** "India has not been recognized as a nuclear weapon state, implicitly or otherwise. The application of the US laws including the Hyde Act will recognize India as a NNWS. This has relevance to the way the safeguards and other regimes will apply in the 123 Agreement."

**Response:** The Hyde Act as well as the 123 Agreement recognize India's strategic programme and endorse a waiver for India from full-scope safeguards. The safeguards and their applicability will be negotiated to make them *India-specific and fully acceptable to India*.

**Query 1.1.3. National Laws of the US that apply:** "The Left Parties insist that a comprehensive list of the domestic laws of the US that are applicable for the implementation of the 123 Agreement should be framed."

**Response:** The US side will, naturally, implement the Agreement in accordance with US laws. There is no reason for India, who will ensure that implementation by India, too, is in accordance with her own national laws, to expect otherwise.

It has been clearly stated in the 123 Agreement (Article 16.4) that the Agreement "*will be implemented in good faith and in accordance with the principles of international law*" – a concept that has been explained in the response of 17 September 2007.

**Query 1.2. Applicability of the Hyde Act.** "Hyde Act . . . becomes an integral part of the 123 Agreement through



Article 2.1 that requires conformity with national laws . . . Is it the UPA's contention that where the Hyde Act and the 123 Agreement do not conflict with or cover the same ground as the 123 Agreement, the Hyde Act provisions will not apply on the US Administration?"

**Response:** It may be noted that there is no provision to the effect that the Agreement is subject to the national laws of the parties. Under Article 2.1, it is only the implementation of the Agreement that will be in accordance with the national laws of the respective parties. Accordingly, the substantive rights and obligations under the Agreement are not affected by the national laws of the parties.

The 123 Agreement, when it becomes law with US Congressional approval, will override Hyde Act. The 123 Agreement and its provisions will indicate the rights and obligations of both sides. The request that Left Parties may clarify which sections of the Hyde Act will prevent the US from fulfilling obligations committed in the 123 Agreement has not been answered in the October 5 response of the Left Parties.

**2<sup>nd</sup> Query under 1.2:** "The bridge to the Hyde Act is provided by the Preamble to the 123 Agreement. . . . It may be mentioned here that the Preamble to the 123 Agreement states that Agreement is '*desirous of strengthening the strategic partnership between them.*'. . . This preambular statement can be used to lend a certain colour and tone to the interpretation of the 123 Agreement. Article 31 of the Vienna Convention of the Law of Treaties notes the general rule of interpretation... Therefore the Preamble can always be taken cognizance of in the act of interpretation."

**Response:** The Preamble of the 123 Agreement has been *partially* quoted in para 1.2. It is relevant to state that by the same argument, the Preamble also mentions that the two Parties enter into the Agreement "*wishing to develop such co-operation on the basis of mutual respect for sovereignty, non-interference in each other's internal affairs, equality, mutual benefit, reciprocity, and with due respect for each other's nuclear programmes*".

Article 31, para 2 of the Vienna Convention states:

“2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.”

It may be noted that all the elements included in the “context” are based on agreement between the parties. Accordingly, the *national laws of one party* cannot be considered as being included as relevant for the purpose of interpretation of a treaty.

**Query 1.3. Applicability of the Hyde Act:** “The Hyde Act continues to frame the obligations of the US through the reference to national laws in Article 2.1 of the Agreement”

**Response:** The Hyde Act is an enabling legislation, an internal requirement in the US legislature. If its sections were meant to stipulate the terms of the civil nuclear cooperation between India and the USA agreement, then there would have been no need for it to enable a further *Agreement* – there would have been no requirement for the US Government to negotiate a separate agreement that spells out rights and obligations and send it for approval to the US Congress. The Hyde Act itself – and later the US government – have made very clear which sections are binding and which are non-binding – even on the US Government. As far as India is concerned, it is the 123 Agreement, when it becomes law, that will govern the rights and obligations of the parties.

**Query 1.4. Coverage of the Hyde Act regarding term-**

**ination:** “The Hyde Act has also defined limits of the 123 Agreement. . . . It has not only defined the conditions for termination if India violates what the US Congress considers as India’s commitments, but also what the US Administration should do if the Agreement is terminated.”

**Response:** The Agreement gives equal rights to both Parties to seek termination. Once the 123 Agreement becomes law, the termination clause in the 123 Agreement, and no other, will apply.

**Query 1.5. The Vienna Convention, Law of Treaties and Domestic Laws:** “. . . What are the International treaties that are referred to in Section 2.1 . . . if the Government is not aware of the international treaties referred to in Article 2.1 of the 123 Agreement, then this has to be clarified before proceeding further.”

**Response:** A listing of international treaties to which a State may be party is not needed. What is relevant and logical is for the Agreement to clearly provide that international treaties that one Party is committed to should not become a liability for the other. This clause protects the Parties from unwittingly committing to additional or unknown obligations of the other Party.

**Query 1.6. India and China Agreements:** “The UPA’s Note . . . had claimed that the India-US 123 Agreement is superior to the China-US 123 Agreement . . . The provisions in the China US Agreement and the India-US Agreement regarding compatibility with national laws are not comparable.”

**Response:** This Agreement is about India and the USA. It should be recognized that we have achieved terms that are appropriate for *us*. The position and rationale for preferring the formulation that we chose has been explained earlier in detail in the 17 September Note.

As stated in the Note of 24 September 2007, Article 16.4 of the India-US Agreement clearly stipulates that the 123 Agreement *shall* be implemented in accordance with the principles of international law, which includes the principles of law of treaties, and more specifically, includes the

customary rule embodied in Article 27 of the Vienna Convention. This has also been addressed in the response at 1.1.3.

**Query 1.8 Arbitration vs. Consultation:** “The provisions of Consultations and Arbitration are not mutually exclusive. All forms of dispute settlement should be provided for. For instance, the WTO Agreements provide all possible alternatives viz. from consultations to arbitration.”

**Response:** This is a *bilateral* agreement and not a multilateral treaty. There is a strong rationale for preferring consultations over subjecting ourselves to arbitration by a third party.

Arbitration involves a third party compulsory binding dispute settlement process, whereas in consultations, disputes are to be settled between the parties themselves, and no settlement may be forced on either party.

**Query 6. Reprocessing:** “. . . the reprocessing consent is only notional at this stage . . . It is more a consent to reach an agreement in the future on reprocessing, which may or may not be reached.”

**Response:** The reprocessing consent has *been granted* and it is not “*consent to reach an agreement in the future on reprocessing*”. The future negotiations will *only be on arrangements and procedures* under which such reprocessing or other alternations in form or content will take place.

The arrangements and procedure for reprocessing will, as provided in the Agreement, be *negotiated*. Nowhere in the 123 Agreement is there a commitment to follow a *particular model prescribed in US or Indian Law or to use any existing template of either side*.

Article 6 (iii) provides a definitive *time-frame* for finalizing the arrangements and procedures.

## 7. ENERGY ISSUES

**7.1 Capital costs of imported nuclear reactors:** Rebuttal asks for details of analysis by Commissariat a l’Energie

Atomique (CEA). A paper by Eric Proust is enclosed. Studies carried out by DAE and reported in the document titled, "A Strategy for Growth of Electrical Energy in India" ([www.dae.gov.in](http://www.dae.gov.in)) issued in 2004 concludes that even when full potential of the fast breeder reactors have been realized, cumulative import of primary energy till the middle of this century will be about 30 per cent. Obviously there is a need to reduce this dependence on import of fossil fuels. Report on Integrated Energy Policy prepared by the Planning Commission in 2006 recognizes this and recommends import of light water reactors to supplement the indigenous programme. In parallel, NPCIL has been also seized with this issue and carried out a detailed study in 2005 on economics of light water reactors. This study was updated recently and update was attached to inputs from DAE for the questionnaire dated 14 September 2007 received from the Left Parties. It is enclosed again for ready reference. It is based on all these analyses that NPCIL has formulated the programme to set up nuclear generation capacity of 40,000 MWe by the year 2020.

**7.2 Lack of sufficient study and techno-economic analysis:** Please see response to paragraph 7.1

**7.3 Nuclear renaissance:** First, let us recall historical facts. While no new plant has been built in the recent past in the West, electricity produced from existing power plants has been continuously increasing. In Nineteen Seventies, nuclear power plants were operating at capacity factors of the order of 50 per cent, while at present they are operating at capacity factors of the order of 90 per cent. Simultaneously, nuclear power plants set up earlier had certain operating margins, which were decided based on the knowledge of nuclear science and engineering in the seventies. As the knowledge base and operating experience increased, it was possible to upgrade the capacity of existing plants and this has been done. As a result of these two factors, electricity generated from nuclear power plants in the world has been continuously

increasing (enclosed figure). Now when full potential of existing nuclear power plants has been realized, industry in the OECD countries where most of the nuclear power plants are located, is looking forward to building new plants and NRG Energy and South Texas Project Nuclear Operating Co., USA have filed the first full application with US NRC for a construction and operating license for a new nuclear power plant in September this year. Left Parties have already mentioned about new nuclear power plants in Finland and France and very soon one will see new plants in USA as well. Current nuclear capacity is about 370 GWe. Several forecasts have been made with regard to growth and even the MIT study, which has made very negative assumptions with regard to economics, postulates a global growth scenario that by mid-century would see 1000 to 1500 reactors of 1000 MWe capacity each deployed worldwide. License applications being moved now is a step towards increase in installed capacity in the future.

**7.4. Decarbonizing the economy:** IPC has forecast an increase in the share of electricity supplied by nuclear plants from 16 per cent in 2005 to 18 per cent by 2030. This indicates that they expect that all existing nuclear power plants after completion of their life time will be replaced by nuclear power plants and new power plants will also be built. It must be remembered that several of the existing power plants are nearing the end of their life and will not get license for continued operation and will have to be closed down. Significant increase in nuclear generation will start only after existing plants have been replaced and developing countries have started setting up nuclear power plants. Setting up of additional nuclear power plants will also decrease carbon emissions, which otherwise would increase. It is worth recalling what Joint Science Academies' statement (enclosed) on growth and responsibility: sustainability, energy efficiency and climate protection issued in May 2007 has to say, "Against this background it will be necessary to develop and deploy new sources and systems for energy supply, including clean use of cal, carbon capture

and storage, unconventional fossil fuel resources, *advanced nuclear systems* and advanced renewable energy systems (including solar, wind, biomass and geothermal energy), smart grids and energy storage technologies.” (emphasis added)

**8. Impact of imported reactors on domestic industry:**

Inherent assumption in the argument of the Left Parties is that imported reactors will replace indigenous reactors. It is restated that imported reactors will be in addition to the ongoing indigenous programme. As indicated earlier, at present India imports about 30 per cent of its primary energy. What we are proposing is to continue with our indigenous programme and use the additionality provided by opening up of civil nuclear cooperation for replacing import component of primary energy. It can take two forms: setting up of additional Pressurized Water Reactors using imported uranium as fuel and setting up of light water reactors. Setting up of additional reactors will thus provide additional jobs to Indian industry. We have also to remember that at present India faces shortage in peak power as well as average electricity supplies. Estimates by TERI with regard to the cost to the economy for each kilowatt-hour of energy not supplied are in the range of Rs 15–25.

**9. Cost of energy from various sources:** The estimated cost of Kudankulam Nuclear Power Project units 1&2, as approved in the financial sanction was US \$2804 million. It consisted of Rs. 3796 crores (807 million US \$) Indian cost component and US\$1996 million as foreign component. The sanctioned cost of Rs. 13171 crores was estimated on the basis of prevailing exchange rate of Rs. 47/US \$.

As was mentioned in the communication written in response to the rejoinder of Left Parties dated 19 September, norms for fixing tariff of electricity from nuclear power plants in India have been continuously evolving. In the initial development phases, norms for fixing tariff were based on single part tariff, a base capacity factor of 62.8 per cent, and

levies for research and development, renovation and modernization. Later, the policy was revised and base capacity factor was increased to 68.5 per cent and the levies on research and development, renovation and modernization were withdrawn.

Also, the interest rate assumptions with regard to US \$ exchange rate have undergone significant shifts in the last few years. For example, it was assumed with regard to tariff estimates quoted earlier for Kudankulam Project, that US \$ will appreciate with respect to Rupee at a rate of 4 per cent per annum. Similarly, components in the tariff like return on equity, depreciation rate, interest on working capital etc. have generally seen downward trends in the last few years. Based on such varying parameters different tariff estimates have been quoted during the period.

As was stated in the Communication written in response to the rejoinder of Left Parties dated 19 September, the policy on tariff for light water reactor is being worked out. The estimate of Rs. 1.99 per kWh for Kudankulam Project has been carried out on the basis of the prevailing thermal power plant tariff norms and taking into account the present financial scenario. The broad Techno-Economical parameters assumed earlier and those at present are tabulated below:

	Sanction	Present scenario
Debt: Equity Ratio	1:1	2:1
Exchange Rate Rs./\$	Rs. 47/US \$	Rs. 40/US\$
Rate of Return on Equity	16%	14%
Depreciation	5%	3.6%
Interest on working capital	16%	10.5%
Annual O&M cost	3% of capital cost (including plant insurance)	2% Insurance on actuals
Capacity Factor	68%	80%
R&M Levy	5 paise per kWh	Nil
R&D Charges	3 paise per kWh	Nil

Comparison of Kudankulam tariff with that obtained



at Kaiga is out of place. The high tariff of Kaiga 1&2 as worked out in year 2000 was an exception and not the norm. The dome de-lamination incident during the execution of the project and the subsequent regulatory review & reconstruction delayed the project completion. As most of the expenditure on the project had already been incurred, the high interest regime prevalent then led to a high Interest During Construction (IDC) component of about 37 per cent in the completion cost. Hence, a negotiated tariff as given in the Left Parties' Note of 5 October was adopted. However, tariff reduction measures and changes in economic parameters, brought out above, reduced the tariff. The current notified tariff of Kaiga 1&2 at present is 279.50 paise/kWh.

Kaiga-1&2 as mentioned above suffered delays and increase in cost due to higher accumulated interest during construction. It will be appropriate to look at the recently completed PHWR projects as at TAPP-3&4 (540 MWe units). These units have been completed ahead of schedule and well within the sanctioned cost. The current notified tariff is 265.48 paise/kWh. The project has been completed at the cost of Rs. 5570 core against Rs. 6525 core considered in the tariff notification. Further, the debt equity structure of the project is also being changed to 2:1 from the 1:1 envisaged earlier. These factors would result into further lowering the current notified tariff. Over the years, NPCIL has demonstrated maturity in handling multiple projects efficiently and in the recently completed projects there has been no time and cost overruns. The profitability achieved by NPCIL with the present reduced tariff has been such that it has not been drawing any budgetary support for the past two years for its projects. NPCIL is geared up to take up the XI plan projects from its own resources and debt from the market.

### 10. URANIUM SUPPLIES

Import of uranium is to provide additionality to the ongoing domestic nuclear power programme. It will help reduce import of primary energy.

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As already stated NPCIL has done a detailed study of economics of light water reactors before arriving at the proposal to set up 40,000 MW by the year 2020.

Government has full clarity with regard to role of FBRs and about FBRs to be offered to the IAEA for safeguards. As noted in the response of 24 September, Government will consider offering specific fast breeder reactors for safeguards only after technology has stabilized and we are ready to use plutonium recovered from spent fuel of foreign origin.

[The following three annexures were provided with this Note:

Annexure 1: “Economic Competitiveness of New (3<sup>rd</sup> Generation) Nuclear Plants: a French and European perspective”, paper presented at International Congress on Advances in Nuclear Power Plants (ICAPP) 2005, 15-19 May 2005 Seoul - Paper 5728  
Author: Eric Proust [Nuclear Energy Division, CEA; eric.proust@cea.fr].

Annexure 2: Chart on Nuclear electricity generation and capacity additions since 1966, Page 3, Nuclear Power and Sustainable Development, IAEA Publication, April 2006.

Link: [http://www.iaea.org/OurWork/ST/NE/Pess/assets/06-13891\\_NP&SDbrochure.pdf](http://www.iaea.org/OurWork/ST/NE/Pess/assets/06-13891_NP&SDbrochure.pdf)

Annexure 3: Joint science academies’ statement on growth and responsibility: the promotion and protection of innovation.

Link: [http://www.nationalacademies.org/includes/G8Statement\\_Innovation\\_07\\_May.pdf](http://www.nationalacademies.org/includes/G8Statement_Innovation_07_May.pdf)

## **Left Parties**

# **Rejoinder to UPA's Response of 8th October**

**October 20, 2007**

Despite several rounds of exchanges, the UPA has not been able to satisfactorily clarify upon the substantive issues raised by the Left Parties regarding the implications of the Hyde Act for the 123 Agreement and self-reliance in the nuclear sector. Clarity is essential before India can proceed on a path that involves obligations and commitments in perpetuity. The UPA continues to offer, on several questions relating to the 123 Agreement, interpretations that are different from the official and publicly stated positions of the United States. In some cases the positions enunciated by the two sides are contradictory. The record of the US reflects a tendency to continuously shift the goalposts on nuclear issues. This has become evident through actions taken by the US since the July 18, 2005 Joint Statement of Prime Minister Manmohan Singh and President Bush, especially the passage of the Hyde Act. The resolution of such contradictions and differences between the Indian position and that of the US is therefore imperative, before the Government proceeds further.

### **ISSUES RELATED TO THE 123 AGREEMENT**

**1. Imbalance of Obligations Regarding Fuel Supply and Safeguards:** The UPA's Note continues to insist that a "careful balance of obligations has been agreed upon" in the 123 Agreement. However, the Left Parties' notes have repeatedly drawn attention to the actual lack of balance of obligations

in the Agreement, where IAEA safeguards in perpetuity are clearly written into the text whereas the fuel supply guarantees are ambiguous and will cease on termination of the Agreement. This point is not clarified in the UPA's latest response. Various other clarifications that have been sought on fuel supply guarantees, particularly with regard to future amendment of US domestic laws as mentioned in Article 5.6(a), are also not forthcoming.

**2. Hyde Act and Permanent Waiver:** The UPA's Note now accepts that the provisions of the Hyde Act that are relevant to the terms of cooperation "have been carefully addressed in the operative Agreement". The UPA's Note also implicitly admits that *in respect of the provisions of the Hyde Act that are not incorporated in the 123 Agreement, it is the Hyde Act that will prevail*. This is evident in the admission contained in the UPA's Note that any nuclear test by India will result in the imposition of sanctions by the US. As the Left Parties' Note had pointed out, this is precisely the content of Section 106 of the Hyde Act. While the 123 Agreement itself is silent on this question, it is clear from the admission in the UPA's Note that it is the provision of the Hyde Act that is operative here. Similarly, there are other provisions of the Hyde Act, which are outside the 123 Agreement and could therefore be used to put pressure on India's foreign policy. The same admission in the UPA's Note also *negates* the claim that the Hyde Act constitutes a permanent waiver of the relevant provisions of the Nuclear Non-Proliferation Act of 1978. The Left Parties' Note had pointed out that these provisions of the NNPA prohibit the transfer of any nuclear material to any non-nuclear weapons country (as defined by NPT), which has exploded a nuclear device or has violated other clauses of NNPA and that the Hyde Act provides only a one-time waiver of these provisions.

**3. Hyde Act and the 123 Agreement:** The UPA's Note continues to assert that the 123 Agreement, once it becomes

law with Congressional approval, will override the Hyde Act. The Left Parties' Note had referred to the clarification made by US Assistant Secretary of State, Richard Boucher that this was *not* "a meaningful statement". The UPA's Note remains silent on this obvious contradiction between its claim and the official position of the US.

**4. Reference to National Laws in the 123 Agreement:**

The UPA's Note seeks to make a distinction between the statement that "the Agreement is subject to the national laws of the parties" and the statement that "only the implementation of the Agreement that will be in accordance with the national laws of the respective parties". In the light of the above discussion relating to the Hyde Act, it is clear that this distinction cannot be maintained. In any case, an Agreement has meaning only in so far as it is implemented. Hence, the request made by the Left Parties to provide a list of all national laws relevant to the 123 Agreement is crucial and remains to be answered.

**5. Reference to International Treaties in the 123 Agreement:** The UPA's Note insists that the reference in Art. 2.1 of the 123 Agreement to international treaties is innocuous. However, it ignores the sharp differences between the international obligations of the India and the US. One such difference relates to the Nuclear Non-Proliferation Treaty, where India is a non-signatory and the US is a nuclear weapons state signatory. It is therefore necessary to consider the possible conflict between the obligations of the US under the NPT and its obligations under the 123 Agreement. In this regard it is relevant to Note that the Hyde Act explicitly insists on the US maintaining its obligations under the NPT. Therefore, the Left Parties' request for providing a list of international treaties relevant to the 123 Agreement is an important one and remains unfulfilled.

**6. Interpretation of Vienna Convention:** The UPA's Note

repeats its own reading of the status of the 123 Agreement in international law, particularly the Vienna Convention on the Law of Treaties. However, it fails to address the central issue raised in the Left Parties' Note that according to Article 31 of the Vienna Convention, the 123 Agreement would be interpreted in the way it is written. Since the implementation of the Agreement "*in accordance with its respective applicable treaties, national laws*" is categorically mentioned in Article 2.1 of the 123 Agreement, these would have to be considered and cannot be wished away, which the UPA's Note does. The Left Parties' Note had emphasized that the key issue was to get the US to abide by its obligations under the 123 Agreement. Given the wordings of the 123 Agreement, it is open to the US to advance a strong legal case to justify the violation of obligations if it feels its national interests are not being served by the 123 Agreement. The UPA's Note fails to provide any assurance that the wording of the 123 Agreement incorporates substantial guarantees against attempts by the US to renege on its obligations and commitments later on. The US obligations on fuel supply guarantees and reprocessing have been hedged in different ways, permitting them to rescind from these obligations later if they so wish. India's obligations, on the other hand, have been defined much more categorically and in hard treaty language.

**7. Termination of the Agreement:** The UPA's response essentially confirms that the US can terminate the agreement without consultations if it so desires vide Article 14.2 of the 123 Agreement. The assertion made in the UPA's Note that the Agreement "gives equal rights to both Parties to seek termination" is irrelevant, since the issue is to bind the US to its commitments and obligations as a supplier. It was in this regard that the Left Parties' notes had brought out the examples of the 123 Agreements that the US has with other countries. In particular, the nature of the guarantees in these agreements and the clear commitments that they impose on the US in specific terms of international law and/or the Vienna

Convention were highlighted. The UPA, after having earlier claimed that India's 123 Agreement was "superior", is now justifying the wording of the current Agreement as one which is "appropriate for us". Thus, unambiguous guarantees that hold the US to its obligations in terms of international law is an issue that the UPA's Note has not addressed satisfactorily.

**8. Reprocessing Rights in the 123 Agreement:** The UPA's Note repeats a position on reprocessing that has been flatly contradicted by US officials. The UPA's Note denies the role of Section 131 of the US Atomic Energy Act, despite the statement of the US Deputy Secretary of State, Nicholas Burns made on July 27, 2007, that "*Section 131 of the Atomic Energy Act, of course, calls for subsequent arrangements in reprocessing, arrangements in procedures, that would need to be agreed upon before the reprocessing could actually take place.*" It is clear that the interpretation of the UPA, that further "arrangements and procedures" to be negotiated for reprocessing are of a routine nature, is not shared by the US side. Without agreement on the "arrangements and procedures", the so-called "consent" on reprocessing has little value. Apart from a timeline, the consent to reprocess in the 123 Agreement is the same as in the Tarapur 123 Agreement. The UPA Note appears to suggest that no further problem could arise between the in-principle consent for reprocessing and its actual implementation. Is the UPA aware that arrangements and procedures under Section 131 include US Congressional approval, which could lead to unacceptable policy pressures at a later date? Another potential source for shifting the goalposts on this issue is already evident in the repeated reference by Nicholas Burns to a "state of the art" reprocessing facility that India will set up. Has the Government considered the possibility that this may imply further conditions from the US side regarding the nature of the new reprocessing facility?

**9. Reprocessing and the Fast Breeder Programme:** The

UPA has failed to clarify upon the relationship, under the proposed nuclear cooperation regime, between the new reprocessing facility and the indigenous fast breeder programme. The timeline for the new reprocessing facility in relation to the setting up of fast breeder reactors that will be in the civilian sector under safeguards, utilizing spent nuclear fuel of imported origin, is totally unclear. Moreover, before the fast breeder technology is stabilized, what will happen to the large quantities of spent nuclear fuel that will be generated from imported uranium that will be utilized in safeguarded reactors, many of which themselves may have been imported? These issues remain unclear.

**10. Restrictions on Dual-Use Technology:** The UPA's Note has once again evaded the issue of dual-use restrictions. The question of how burdensome the dual-use restrictions on reprocessing and enrichment are likely to be and how they will affect future reprocessing activity, fast breeder reactor development and construction and the full development of the three-stage closed nuclear fuel cycle, has not been addressed. There is no clarity on this in the UPA's response despite the Left Parties having repeatedly raised this issue. This is a central aspect of the discriminatory global nuclear regime that India has always resisted.

#### ENERGY ISSUES

**1. Capital Costs of Imported Reactors:** The question the Left Parties' Note had raised was whether *independent studies* have been carried out to examine the costs claimed by nuclear industry. Studies by either *Commissariat a l'Energie Atomique* or Nuclear Power Corporation do not fulfill this requirement. It is well known that nuclear industry has made optimistic projections of costs, which have not been backed up by actual experience. The UPA's Note had mentioned CEA and other studies as the basis for arguing that electricity generated from imported reactors would be cost competitive with coal based plants. CEA in Indian energy circles would

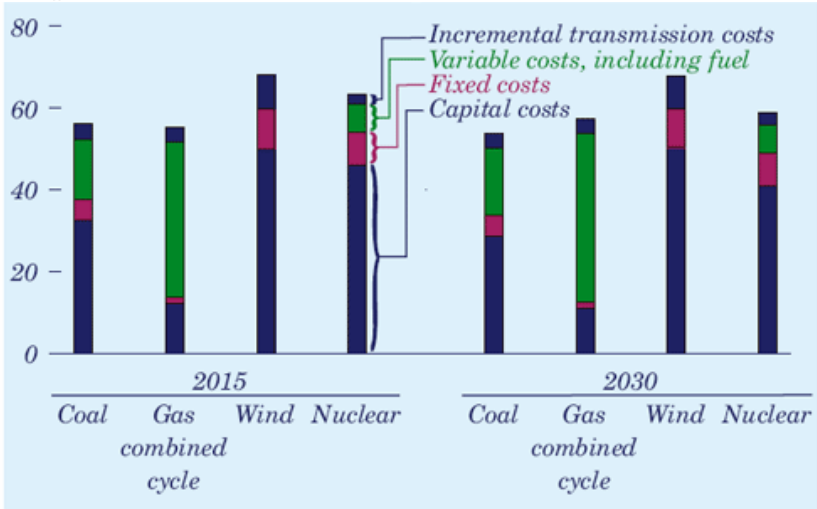


be considered Central Electricity Authority and not *Commissariat a l'Energie Atomique*.

The basic question remains unanswered. If we want to invest in 40,000 MW of nuclear power by 2020, we need studies, which analyze the costs of domestic reactors, imported reactors and also energy costs from other sources of energy. The Planning Commission study that was quoted in the Left Parties' Note — Integrated Energy Policy — had done this exercise and had come out with a detailed plan. There is no such study which has undertaken a similar exercise for 40,000 MW of imported nuclear reactors by 2020 that the Government is talking about. Without such a study and a proper evaluation of other options, the country should not be committed to this path.

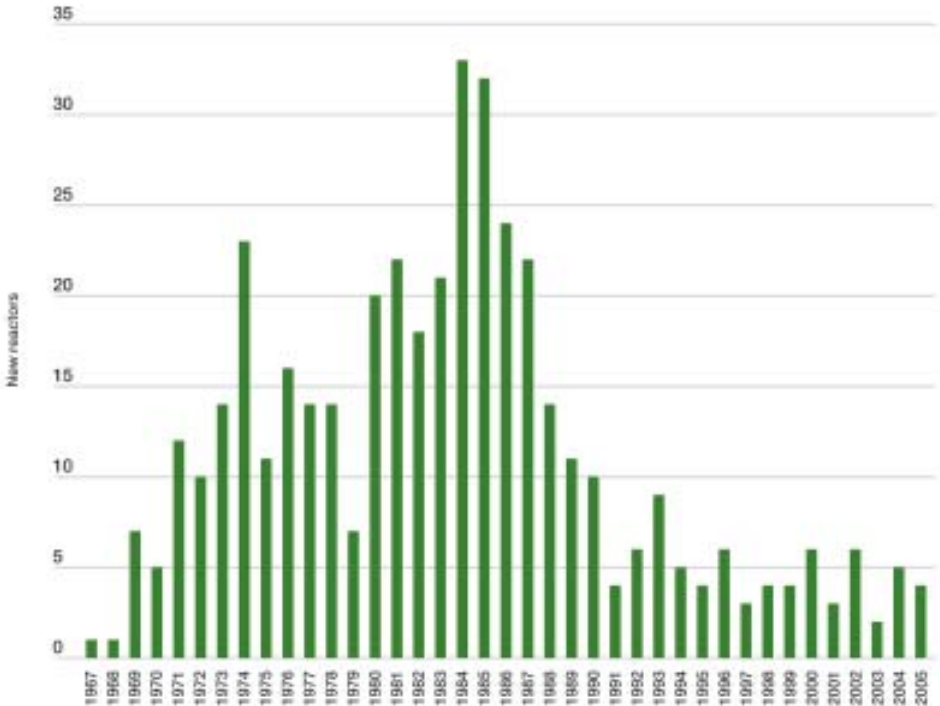
The study quoted in the UPA's Note brings out clearly how other countries have gone about evaluating their energy options. France has to import coal and gas/oil and therefore, the economics of nuclear energy is quite different from India, which has very large reserves of coal. France has also to take into account its per capita greenhouse gas emissions (which are about six times more than India's) and the commitment it had made in Kyoto. Therefore, what may be an economically viable option for France cannot be used as a basis for India. However, the French study is interesting for analyzing the cost of imported reactors. The study by Eric Proust takes the overnight cost (cost of the plant without taking Interest During Construction) as ~ Euro 1300 per KW (over \$1800 per KW at the current exchange rate). The first plant in Western Europe in 10 years — the Olkiluoto Unit 3 of 1,600 MW in Finland — started with a similar assumption of costs. However, when the actual order was placed on Areva, the French company, even after significant French Government subsidies, the cost had gone up to Euro 3.2 billion, i.e., the cost per KW was Euro 2000 per KW (over \$2800 per KW at the current exchange rate). After the placement of order, it has seen a time overrun of 18 months in the first 18 months of its construction and a further cost

Chart 1: Levelized electricity costs for new plants, 2015 and 2030 (2005 mills per kilowatthour)



Source: *Annual Energy Outlook 2007*, US Energy Information Administration.

Chart 2: Installation of New Nuclear Capacity onto Grid



Source: *The Economics of Nuclear Power*, Greenpeace International, May 2007.

overrun of more than 25 per cent (*Nuclear Bid to Rival Coal Chilled by Flaws, Delay in Finland*, By Alan Katz, September 5, 2007, Bloomberg).

Similar cost and time overruns have dogged other nuclear projects abroad. Internationally, investors and experts discount the highly optimistic figures given by the nuclear industry. The Finnish example only confirms our view that the actual cost of imported reactors is much higher than what the Government is considering.

The US Energy Information Administration, in its *Annual Energy Outlook 2007 With Projections to 2030* has computed that with capital costs of nuclear reactors at 2006 levels, cost of electricity from nuclear plants will be higher than that from either coal or gas. The chart from this study is reproduced (see Chart 1).

It is in the light of the above that the need for an India specific independent study analyzing India's energy options was emphasized, rather than relying on the claims of the nuclear industry. There is also no detailed DAE/NPC study that has been enclosed with the UPA's Note, without which the basis of the capital cost of imported light water reactors considered by them cannot be commented upon.

**2. Nuclear Renaissance:** Nuclear renaissance is a hype created by the nuclear industry in the US, Western Europe and Japan. In all these countries, the total number of nuclear plants being built is only 3. This is in contrast to over 20 new plants being commissioned every year in those countries during the heydays of nuclear energy in the 1980s (see Chart 2). The majority of new plants are today in countries that are expanding their electricity sector significantly and as a part of that they are also investing in nuclear energy. Here also, the proportion of nuclear plants does not show any sign of the renaissance that the UPA's Note talks about. For example, China currently gets only 1.8 per cent of its electricity from nuclear plants, not very different from India. Even if we take the future nuclear plants that China proposes

to build, nuclear energy is not going to be more than 5 per cent of its total installed capacity.

The talk of nuclear renaissance is based on the US Government trying to kick-start their moribund nuclear industry. There is up to half a billion dollars available as subsidy for the first six nuclear plants in the US, apart from numerous other measures such as soft loans and Government indemnity against time and cost overruns. Despite that, the first licenses to construct and operate nuclear plants are as much as 5 years away. Jim Rogers, the CEO of Duke Power, one of the companies proposing to build a new nuclear plant in the US, expressed his pessimism about Duke's ability to build this plant. About nuclear renaissance, in his testimony before the North Carolina Utilities Commission in January 2007, he said, "I'm not a true believer...We're talking about a renaissance in nuclear. I don't see it." He also indicated in this testimony that he believed the cost per KW would be of the order of \$2500-2600 and not \$1800 as claimed by Westinghouse.

**3. Decarbonizing the Economy:** The Indian Government is on record that with our per capita emissions being one tenth to one twentieth of countries such as the US and other developed countries, we cannot take measures to decarbonize the economy before developed countries bring down their emissions. Indian estimates suggest that it will cost \$2.5 trillion to decarbonize the economy and would severely impact development. If the Government wants to re-look at these issues, it is welcome. But that needs to be done in an analysis of what are the emission levels that we would like to reach, the impact of various options on such emission levels and the costs involved. If after that, it is felt that the nuclear option should be seriously pursued for decarbonizing the economy, the nuclear option of 40,000 MW can be considered. Otherwise, there are many other ways to limit greenhouse gas emissions, nuclear energy being only one amongst many. The key issue here is a quantitative analysis of the options

before us including limiting greenhouse gas emissions and working out the targets. Instead, what the Government seems to be doing is first deciding on how much nuclear power we would like to add with imported reactors and then finding various justifications for this.

Nicholas Burns, in his recent article in Foreign Affairs, Nov/Dec 2007, stated: "This Agreement will deepen the strategic partnership, create new opportunities for US businesses in India, enhance global energy security, and reduce India's carbon emissions". It is ironical that the US is talking about helping India to reduce carbon emissions while not agreeing to reduce its own. This reflects the US position: if the world is endangered by greenhouse emissions, it is countries such as India and China that need to limit their emissions. For the US, no reduction of greenhouse gases is possible; George Bush senior expressed this quite clearly, "American lifestyles are not open to negotiations". India seems to be succumbing to the US view of greenhouse gas emissions and not developing a perspective of its own.

#### **4. Impact of Imported Reactors on Domestic Industry:**

It is difficult to understand the contention contained in the UPA's Note that imported nuclear reactors would be additional to the ongoing indigenous programme, and help in "replacing import component of primary energy". The bulk of our import of primary energy is oil and this cannot be substituted by nuclear energy. The country's fuel policy has to recognize coal as its immediate primary energy source and invest in technology upgradation and further prospecting. At present, we waste huge amounts of coal due to inefficient mining. This is where lack of capital is a major bottleneck. Instead of looking for high cost import of reactors, we should allocate larger resources for more efficient mining of coal and oil/gas exploration.

As far as power generation is concerned, if we decide to increase the share of nuclear power with imported reactors, the investment will have to be made either from the

allocations earmarked for the power sector, or elsewhere. If we import reactors in large numbers, then this investment will not lead to domestic manufacture or jobs. While the UPA is busy arguing that import of reactors would not have any impact on the domestic industry, US officials like Condoleezza Rice have been arguing that civilian nuclear cooperation with India would create jobs in the US. The other important issue related to this is that originally India had planned to overcome its shortage of uranium by the fast breeder route. From the UPA's Note, it appears that the focus is shifting towards an expansion of the nuclear energy sector by primarily promoting imported fuel based light water reactors. As we have noted earlier, this has long-term adverse implications for energy security.

#### **5. Cost of Electricity from Kaiga and Kudankulam:**

While the UPA's Note has talked of electricity from Kudankulam being Rs 1.99 per unit, the CMD of NPC, SK Jain has stated that power from Kudankulam would not exceed Rs. 2.50 per unit. No calculations have been provided to support these figures. Calculations using the figures from the UPA's Note and the NPC's document "Light Water Reactors in India, An Economic Perspective", show that the cost per unit of electricity comes to Rs.2.50-2.75 per unit and not Rs.1.99. However, NPC's figures, particularly for fuel costs, are questionable. We are not aware of the fuel contract with the Russians, but based on current international prices of uranium, the figures in NPC's document appear quite optimistic. The Annual O&M costs are similarly taken on an optimistic basis. No information is available on the impact of project slippage on the project cost. Once these are taken into account, the figures for Kudankulam, even with the low capital cost that the Russians have offered, would be around Rs.3.00 per unit.

Kudankulam is a project where an exceptionally low price for reactors was offered by the Russians and the Russian price was fixed in dollar terms. We have benefited from

depreciation of the dollar. The Russians have also given us soft loans, again denominated in dollars, and this has helped the project cost. As the NPC CMD has explained, without the drop in dollar rate, the price would have been in the range of Rs.3.00 per unit. However, unless the project is finished and we have the actual costs, the figures quoted are only in the realm of conjecture. The other issue in the Kudankulam cost is the cost of reprocessing the fuel. If we take the cost of reprocessing fuel, waste disposal and decommissioning costs, the cost per unit would be higher.

Regarding Kaiga, the UPA's Note suggests that the high capital cost for the project is to be attributed to the dome failure and consequent delays leading to a high Interest During Construction. According to the UPA's Note, the IDC part of the project cost is about 37 per cent. However, Sudhinder Thakur, Executive Director (Corporate Planning), NPC has given the figures of IDC for Kaiga as below:

The revised completion cost of the project is Rs 3,282 crore consisting of the base cost of Rs 2,727 crore and an interest during construction (IDC) component of Rs 555 crore . . . The percentage of IDC in completion cost (inclusive of IDC) is therefore 16.9 per cent. (Economics of Nuclear Power in India: The Real Picture, *Economic and Political Weekly*, December 3, 2005)

If we take the capital cost of Kaiga as Rs. 2,727 crore and other parameters as given in the UPA's Note, and the operating cost as given during tariff calculations, the cost of power from Kaiga would be around Rs.3.20-3.50 per unit.

The key question here is what would be the future capital cost of nuclear plants? If we take the cost of other imported reactors, the prices are much higher than Kudankulam.

If we take the capital cost of Rs.9 crore per MW, the levelled fixed component of the cost (capital servicing cost) from nuclear plants would be around Rs.3.50. If we add the Kaiga variable cost to this, the cost per unit would be of the

order of Rs.5.00. The UPA's Note also claims that NPC would be able to meet all its future requirements from its own resources and market borrowings. No information has been provided regarding the cash reserves of the NPC and how much it proposes to borrow. Is the UPA suggesting that NPC would be able to provide the equity for the entire 40,000 MW proposed to be constructed and raise the entire loan all by itself? The NPC balance sheet certainly does not show this picture. This is quite different from NPC meeting the 11<sup>th</sup> Plan projects on their own.

The above shows that there are a number of questions with regard to the economics of nuclear energy that need to be answered. Merely producing figures from NPC, which is obviously advocating a very large share for nuclear power, is not the best way for planning the future of the power sector. This exercise needs to be undertaken by the Planning Commission to rigorously establish the baseline costs and plan for future investments in a holistic manner.



# **Implications of the Nuclear Agreement on Foreign Policy and Security Matters**



**Left Parties**

# **Indo-US Nuclear Cooperation Agreement: Implications for India's Foreign Policy and Security Matters**

**October 2, 2007**

## INTRODUCTION

It is relevant to recall that in 2004, when the United Progressive Alliance government was formed, the National Common Minimum Programme contained in its foreign policy section the following: "The UPA government will pursue an independent foreign policy keeping in mind its past traditions. This policy will seek to promote multi-polarity in world relations and oppose all attempts at unilateralism." It is also significant that on relations with the United States, the NCMP stated: "Even as it pursues closer engagement and relations with the USA, the UPA government will maintain the independence of India's foreign policy position on all regional and global issues." There was no mention of strategic ties with the USA because it was evident that such a strategic relationship would go contrary to the main direction of foreign policy proposed in the NCMP.

The subsequent decision by the UPA government to project the building up of an India-US strategic partnership as the cornerstone of India's foreign policy is going against the spirit and direction of the foreign policy envisaged in the NCMP. As the Left Parties have pointed out, the proposed

civil nuclear cooperation with the United States as embodied in the 123 Agreement cannot be regarded as a stand-alone project; it forms an integral part of a broader Indo-US strategic alliance. Indeed, senior officials of the Bush administration have been explicit about this connection. The US side has embellished the rationale of the “strategic partnership” in terms of a tryst with India’s destiny – to “help” India become a “major world power in the 21st century”. Ironically, when it comes to India’s vital interest in claiming a permanent seat in the UN Security Council, the US has refused to back India.

The US side considers the civilian nuclear cooperation as deepening Indo-US strategic partnership and elevating it to a “new strategic level”. A prominent India hand in the Bush administration, Ashley Tellis, argues:

For the United States, the ultimate value of the US-Indian relationship is that it helps preserve American primacy and the exercise thereof by constructing a partnership that aids in the *preservation of the balance of power in Asia*, enhances American competitiveness through deepened linkages with a growing Indian economy, and strengthens the American vision of a concert of democratic states by incorporating a major non-Western exemplar of successful democracy such as India.<sup>1</sup> (emphasis added)

The resonance of such strategic thinking in the Indian side is reflected in the words of K. Subrahmanyam, Chairman of the Task Force on Global Strategic Developments, set up by the Prime Minister in November 2005:

*The US strategy is to help develop a balance of power in Asia so that China would not emerge as the sole superpower in the continent...the US decision announced on March 25, 2005 that its (US’) goal is to help India become a major world power in the 21st century...If we*

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understand the long-term vulnerabilities of the US...and therefore its stake in the Indian partnership, we would have greater confidence in the American initiative...<sup>2</sup> (emphasis added)

The similarity between the thinking of the Chairman of a Prime Minister appointed task force on Strategic Developments and those arguing for a strategic relationship between India and the US, in order to preserve “balance of power in Asia”, is indeed striking.

The text of the 123 Agreement in its preamble states that India and the US have arrived at the agreement being, among other things, “desirous of strengthening the Strategic Partnership between them”. The vision of the US, as far as India’s role in the strategic partnership is concerned, is clearly stated in the *Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006*, enacted by the US Congress in order to enable civilian nuclear cooperation with India. The Hyde Act states that such cooperation with a non-NPT signatory like India can occur if:

. . . the country has a functioning and uninterrupted democratic system of government, *has a foreign policy that is congruent to that of the United States*, and is working with the United States on key foreign policy initiatives related to nonproliferation; [Section 102 (6) B]

It goes without saying that “congruence” with US’ foreign policy also amounts to a subversion of India’s independent foreign policy. The UPA has insisted that such provisions of the Hyde Act are not relevant for India. Unfortunately, the record of the UPA government so far shows that it has actually framed policies, which reflect an effort to attain “congruence” with US policies. In its pursuit of a strategic partnership with the US, disregarding the commitment made in the NCMP, the UPA government has already made compromises on India’s independent foreign policy.

## I. COMPROMISES ON INDEPENDENT FOREIGN POLICY

### STAND ON IRAN

The UPA government's foreign policy orientations have shifted in a direction where there is a deliberate attempt to harmonise India's policies with US' global strategies. The most glaring of the consequent aberrations that have crept into India's independent foreign policy, as envisaged under the NCMP, lies in the stance that India adopted on the Iran nuclear issue. The circumstances leading to the complete *volte-face* by India during the vote on Iran in the International Atomic Energy Agency [IAEA] meeting in Vienna on 24 September 2005 remain largely unexplained by the UPA government.

Prior to the second vote on Iran at the IAEA, the US Ambassador David Mulford had publicly warned in January 2006 that the US Congress would not approve the Indo-US Nuclear Agreement unless India voted against Iran. Despite such a humiliating threat from the US, the UPA government went ahead and voted against Iran in IAEA for a second time in February 2006. Following the second IAEA vote, the United Nations Security Council took up the issue and has since imposed sanctions against Iran. The Bush administration has exploited the situation to pressurize Iran by proposing unilateral sanctions and is now seeking tougher sanctions against Iran despite the IAEA's repeated affirmation that no evidence is available regarding Iran's alleged nuclear weapons programme. More alarmingly, there are reports suggesting that the Bush administration may resort to a military attack on Iran in the coming months, bypassing the UN Security Council altogether. The Bush administration has openly called for a "regime change" in Tehran. India's votes against Iran at the IAEA went a long way in enabling the US to transfer the Iran file to the UN Security Council and to resort to threatening measures. This has definitely damaged the mutual trust in Indo-Iranian relations.

Iran shares civilisational bonds with India. It is also a strategically important country in India's extended

neighbourhood. Successive governments in Delhi have fostered close relations with Iran and have regarded Iran as a factor of regional stability. However, even now the UPA government fights shy of constructively engaging Iran for the fear of antagonising the US, which is most evident in the slowing down on the Iran-Pakistan-India gas pipeline project on the part of India. Iran recently voiced its unhappiness over India dragging its feet in the negotiations over the project and complained that it is being forced into a situation to go ahead with the project with Pakistan alone.

Richard Lugar, who was Chairman of the US Senate Foreign Relations Committee, in his opening statement for a meeting on Indo-US civilian nuclear cooperation on 28 June 2006 stated: “We have already seen strategic benefits from our improving relationship with India. India’s votes at the IAEA on the Iran issue last September and this past February demonstrate that New Delhi is able and willing to adjust its traditional foreign policies and play a constructive role on international issues”.

Subsequently, the Hyde Act was enacted by the US Congress. In a section of the Hyde Act, which deals with annual assessment and reporting to the US Congress by the US President on a variety of foreign policy issues related to India, it is also stated:

. . . an assessment of whether India is fully and actively participating in United States and international efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability (including the capability to enrich uranium or reprocess nuclear fuel), and the means to deliver weapons of mass destruction, including a description of the specific measures that India has taken in this regard; and (ii) if India is not assessed to be fully and actively participating in such efforts, a description of— (I) the measures the United States Government has taken to secure India’s

## Left Parties' Note: Implications for Foreign Policy

full and active participation in such efforts; (II) the responses of the Government of India to such measures; and (III) the measures the United States Government plans to take in the coming year to secure India's full and active participation [Section 104g(2) E (i)]

No legislation enacted in any foreign country has ever made such intrusive observations about India's foreign policy. *The issue cannot be sidestepped by suggesting that the Hyde Act does not apply to India. Given the experience of the IAEA vote against Iran it is clear that India would be continuously subjected to US pressure to toe its line on Iran. Is there no link between the Indo-US Joint Statement of July 2005, which announced the civilian nuclear cooperation, and India's vote against Iran at the IAEA in September 2005? Not very long ago, India had envisioned a "strategic partnership" with Iran "for a more stable, secure and prosperous region and for enhanced regional and global cooperation" [India-Iran New Delhi Declaration, January 2003]. Can the UPA government take a clear-cut stand that it will pursue such relations with Iran? Can the UPA government assure that the Iran gas pipeline project will go ahead despite the slowdown in the recent period?*

## IRAQ

The elections in occupied Iraq in December 2005 were generally perceived by the world community as an orchestrated propaganda exercise by the US. However, the UPA government saw those developments only through the American prism and welcomed the elections as a significant step forward in the Iraqi political process. In retrospect, it is clear that neither was there a legitimate political process in occupied Iraq, nor could there be one so long as it remains an occupied country. The restoration of Iraqi sovereignty is the real issue. The UPA government's optimism was completely unfounded when it hailed the elections as leading to a more inclusive and broad-based Iraqi administration and a



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development in Iraq's transition to full sovereignty and democracy. The Iraqi people have since made it clear that the core issue is the continued military occupation of their country by the US led aggressors.

The stance taken by the UPA government on the execution of Saddam Hussein was also deplorable. It overlooked the fact that the US denied justice to the former Iraqi President, and his trial was completely arbitrary. In its keenness not to displease Washington, the UPA government carefully avoided any outright condemnation of the summary execution of Saddam Hussein even without a proper trial. The fact remains that Saddam Hussein was a close friend of India and a participant in the Non-Aligned Movement. Yet, all that the UPA government could say was that it was "disappointed" with his execution. The government failed to reflect the public opinion within India, which was one of revulsion and abhorrence over the US' arbitrary behaviour as an imperial power, flouting elementary tenets of law, justice and fairness.

In the entire period of the UPA government in power, India has not spoken out against the war crimes being perpetrated by the US occupying forces in Iraq and the death of thousands of innocent civilians. The government remained unmoved even by the most glaring atrocities like the massacre at Fallujah or the shocking revelations regarding torture at the Abu Ghraib prison. There was a time not too long ago when India, though much weaker as an economic power than today, didn't hesitate to stand up as the conscience keeper of the world community, especially of the developing countries, voicing opinions about justness, peace and equality. In the given circumstances when the UPA government has to constantly calibrate its foreign policy orientations in terms of the US global strategies, the UPA government has lost the courage to assert India's moral leadership. *Is this in keeping with the NCMP commitment of opposing all attempts at unilateralism?*

### PALESTINE

In deference to the strategic ties with the US and Israel, the UPA government has incrementally distanced itself from the Palestinian cause. The barbaric attacks on the Palestinians in Gaza and West Bank by the Israeli security forces have not received the attention of the Government. After hailing the Palestinian elections held in January 2006, the UPA government completely ignored the subsequent blockade of the Palestinian government by the Israeli authorities through blatantly coercive methods aimed at making the newly elected Palestinian leadership ineffectual. The UPA government has also remained a mute witness to the Israeli attempt to create isolated Palestinian enclaves in order to preempt any just solution to the Palestinian problem. The government has also been found wanting in fulfilling its commitment to the cause of Palestinian people for a homeland of their own. *Is the UPA government willing to give a "fresh thrust" to the traditional ties with West Asia, as promised in the NCMP?*

### ISRAEL

The UPA government has remained silent about the highly provocative Israeli air attack on Syria on September 6, 2007. Despite Syria being a close friend of India in the Arab world, the dependence on the Jewish lobby in the US to canvass support for the Indo-US nuclear deal has made the UPA government beholden to Israel. This has not only made the UPA government look the other way as far as the Israeli atrocities against the Palestinians are concerned, but have led to a broadening and deepening of India's security cooperation with Israel. India has already emerged as the largest buyer of arms from Israel in the world with purchases touching US \$1.5 billion in 2006. All this despite the NCMP not mentioning Israel even once in its text.

### "LOOK EAST" POLICY

India's "Look East" policy, formulated in the early 1990s, has a continued rationale. It aims at meeting the challenges

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of globalisation as well as creating a stable external environment within which the country's development becomes possible. The NCMP also emphasises "intensified" relationship with East Asian countries. However, the politics of creating rival blocs in Asia, which underlies the vision of preserving the "balance of power in Asia" shared by the US and Indian strategic establishments, undercuts the very rationale of the "Look East" policy. It introduces animosities and antipathies in our region. The US does not belong to the Asian region. Geography dictates that India has to live with its neighbours. Ignoring these considerations, India has embarked upon a quadripartite strategic tie-up with the US, Japan and Australia. The strategic dialogue with these three countries, which have a tightly knit security partnership amongst them in the Asia-Pacific region, only serves to create suspicions among the countries of Southeast and East Asia over India's gravitation towards a US-led security bloc in Asia. While such a bloc would serve US geostrategic design of dividing Asia, it is difficult to understand how it would serve India's interests. Why has the UPA government moved in this direction?

#### SHANGHAI COOPERATION ORGANISATION

Distortions have also crept into India's policy toward the Central Asian region. After a promising beginning, Indian policy toward the Shanghai Cooperation Organisation (SCO) has become noticeably lukewarm. India was the only country among the SCO's members and observers that was not represented at the head of state/government level at its Shanghai summit in 2006. There does not seem to be a credible explanation for this other than being an effort to placate the Bush administration. However, it doesn't serve India's interests to be seen as a pillion rider of US "Great Central Asia" strategy. The Central Asian countries resent the US intrusive policies and its attempt to instigate "colour revolutions" in the region. Russia and China also perceive the US strategy as essentially aimed at undercutting their legitimate interests in Central Asia.

The SCO serves India's interests in many ways. Fighting terrorism, religious extremism and political separatism forms the core of the SCO's agenda. In this sphere, India has shared concerns with the SCO member countries. The SCO has also shown keenness over India's participation. It works on the basis of consensus and also shares India's traditional outlook not to be prescriptive. It stands for a democratised world order based on multilateralism and respect of international law. The SCO holds significant potential for enriching India's "Look East" policy. It also offers immense prospects for economic cooperation. India can benefit through participation in the SCO's regional projects in infrastructure development, energy and communications. It is inexplicable, therefore, why the UPA government has not pursued its relations with the SCO more seriously.

#### AFGHANISTAN

The UPA government has viewed the Afghanistan problem exclusively through the prism of the Bush administration's "war on terror". The open-ended induction of the North Atlantic Treaty Organisation (NATO) forces in Afghanistan has profound implications for regional security. Under the fig leaf of a UN Mandate, the NATO forces are operating with impunity. It is a part of the US geo-strategy to expand NATO as the sole security organisation with a global reach and global partners. In Afghanistan, the activities of the US and NATO forces have proved to be highly controversial. The wanton use of force against unarmed innocent civilians has resulted in heavy loss of lives. Afghan people are increasingly showing their resentment over these atrocities. The UPA government has chosen to ignore these war crimes.

India has consistently stood for an independent, non-aligned Afghanistan free of foreign interference. From all accounts, the US and the NATO are determined to consolidate their military presence in Afghanistan on a more or less permanent basis. The US intends to use Afghanistan as a hub

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for its policy toward Central Asia and for threatening neighbouring countries like Iran. These are developments that have a direct bearing on regional stability, including India's security interests. It is surprising, therefore, to note that the UPA government has neither expressed its concern on the deteriorating situation in Afghanistan nor spoken out against the prolonged presence of US and NATO forces there.

#### SUMMING UP

It should be evident from the above that India's strategic alliance with the US has cast its shadow on India's policy towards the regions in its immediate and extended neighbourhood in Asia. The Left Parties have always held that a strategic partnership with the US cannot go hand in hand with the NCMP commitment of pursuing an independent foreign policy. Neither can the civilian nuclear cooperation agreement be seen in isolation to the overall framework of strategic partnership with the US. The specific provision in the Hyde Act demanding that India's foreign policy be "congruent" to that of the US clearly shows the thinking of the US side on the matter. Notwithstanding protestations to the contrary, the fact is that there has been a deliberate attempt to harmonize India's foreign policy positions with that of the US, as has been elaborated above. *This directly militates against the provision of the NCMP which states: "Even as it pursues closer engagement and relations with the USA, the UPA government will maintain the independence of India's foreign policy position on all regional and global issues"*.

## II. DEFENCE COOPERATION WITH THE US: IMPLICATIONS FOR INDIA'S SECURITY

### DEFENCE FRAMEWORK AGREEMENT

The agreement on civilian nuclear cooperation with the US was preceded by a ten-year agreement titled "New Framework for the US-India Defence Relationship", signed

in June 2005 during the visit of the then Defence Minister to Washington. The Defence Framework Agreement was clearly a continuation of the strategic engagement with the US pursued by the NDA government under Next Steps in Strategic Partnership (NSSP). In the history of independent India, this is the first time such a far-reaching defence cooperation agreement has been signed with any country. This unmistakable move towards cementing a strategic and military alliance with the US goes against the understanding on foreign and security policies contained in the NCMP.

#### MULTINATIONAL OPERATIONS

One of the provisions of the Defence Framework Agreement states that the Indian and US' defence establishments shall "collaborate in multinational operations when it is in their common interest". Through this provision on multinational operations India has accepted the US concept of such operations that might be undertaken in third countries outside of the UN auspices. There is no mention in the Defence Framework Agreement that such multinational operations will be with a UN mandate. It merely says that the two countries will "collaborate" in multinational operations in their "common interest". In fact, the Defence Security Cooperation Agency of the US, while notifying the US Congress about the sale of US-made C-130 J military transport aircraft and other equipment to India in May 2007, stated:

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an important partner and to strengthen the US-India strategic relationship, which continues to be an important force for political stability, peace, and economic progress in South Asia. India and the United States are forging an important strategic partnership. The proposed sale will enhance the foreign policy and national security objectives of the US by

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providing the Indian Government with a credible special operations airlift capability that will deter aggression in the region, provide humanitarian airlift capability and *ensure interoperability with US forces in coalition operations.* (emphasis added)

The thinking embodied in the provision on multinational operations is without doubt a major departure from India's longstanding policy of regarding the UN Charter as a cornerstone of inter-state relations. The US has a dubious record of unilateralism, gunboat diplomacy and violation of international law. The Iraq invasion was carried out outside the UN auspices, by a US led "coalition of the willing". *The UPA government, therefore, owes an explanation as to where it is that Indian armed forces could "collaborate" with US forces in multinational operations?*

#### MISSILE DEFENCE SYSTEM

The Defence Framework Agreement calls for an expansion of "collaboration relating to missile defense" with the US. The so-called National Missile Defence (NMD) system is integral to the US strategy of establishing nuclear dominance and pre-empting any challenge to its hegemony in world affairs. The NMD is opposed by Russia as it aims at neutralising Russia's strategic capability and tilting the overall strategic balance in favour of the US. In other words, the NMD will undercut the processes leading to multipolarity in the world order. It is nothing but a contradiction that on the one hand the UPA government professes commitment to a multipolar world order, and on the other hand seeks to collaborate with the US in missile defence.

The UPA government's inclination to participate in the NMD can strain India's traditional ties of friendship and cooperation with Russia. It may also complicate the attempts to forge trust and mutual confidence in India-China relations. The recrudescence of tensions between Russia and the US in the recent period is largely due to the US decision to deploy

parts of its missile defence systems in Central Europe. The cold war mentality reflected in the US attitude towards Russia's resurgence and China's rise should serve as an eye-opener for the UPA government that the US global strategies have only one underlying theme, the single-minded pursuit of its agenda of global dominance. *Does India's interests lie in dovetailing its security interests with the global strategies of the US, like pitting the trans-Atlantic alliance against Russia or dividing Asia into blocs? What is the commonality of interest between India and the US, as far as the initiative on the missile defence system is concerned?*

#### MARITIME SECURITY COOPERATION

India has taken several measures to build a joint security architecture with the US building-in interoperability and institutionalized capacity for joint operations. The signing of an Indo-US Maritime Security Cooperation Framework (MSCF) Agreement in March 2006 has paved the way for strategic naval links between India and the US covering the South-East Asian and the wider Asia-Pacific region. While ostensibly focusing on terrorism, piracy and security of commercial navigation, the strategic significance of the Indo-US MSCF have been noted widely. Nations in the region, especially the littorals States of the Malacca straits, have long regarded the aggressive US push for a sustained presence in the region as intrusive and with hegemonic ambitions. The Indo-US MSCF aims to give the US greater strategic depth in South East Asian and Asia-Pacific waters by leveraging Indian naval strength, while reducing its own profile in the region, especially at a time when US naval fleets are already over-stretched in the Mediterranean, Persian Gulf, Arabian Sea and elsewhere. The Indo-US MSCF has also raised suspicions of being a part of a strategy of containing China and excluding it from the security architecture of the Malacca Straits and other vital sea-lanes in South East Asia. The MSCF seems to be yet another link in the security chain being built by India and the US as part of the Defence Framework



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Agreement and the broader Indo-US Strategic Partnership. *How does India stand to gain from such a security architecture of the Malacca Straits?*

#### LOGISTICS SUPPORT AGREEMENT

The draft of a Logistics Support Agreement (LSA) has already been negotiated with the US under the Defence Framework Agreement, and is currently pending with the Cabinet Committee on Security. The LSA seeks to provide for the respective militaries to use each other's facilities for logistics support such as refueling and berthing facilities and to borrow specified "non-lethal" defence equipment for use elsewhere, all on credit. The LSA is not simply an agreement governing minor courtesies extended by one friendly country to another. Extension of such support services has a clear military purpose: in fact they are designed for use during military operations. Even before the agreement has been inked, Chennai played host to the USS Nimitz in July this year. After being refueled and resupplied at Chennai, the aircraft carrier promptly rejoined active duty in the Persian Gulf where the US fleet is currently deployed to intimidate Iran.

The term Logistics Support Agreement has been coined to disguise the real intent of such an arrangement between military allies. The LSA is merely a different terminology for Acquisition and Cross-Servicing Agreements (ACSA), which itself is only another version of the NATO Mutual Support Act, modified for US dealings with non-NATO countries. All the goals and operational requirements remain the same, namely, interoperability between the armed forces with provision for use of base services, logistics support and borrowing of equipment for urgent use. The US has such Agreements with several allies in different parts of Asia and Latin America. Some of those allies like the Philippines have also felt compelled to rename the ACSA (terming it the Mutual Logistics Support Agreement) so as to deflect domestic criticism. Depositing before the House Armed Services

Committee in June 2004, the then US Under Secretary of Defence for Policy, Douglas Feith stated:

. . . because our forward-deployed forces are unlikely to fight where they're actually based, we have to make those forces rapidly deployable. For this concept to work, *US forces need to be able to move smoothly into, through, and out of host nations*, which puts a premium on *establishing flexible legal and support arrangements with our allies and partners*. (Emphasis added.)

The UPA government has turned a blind eye to the US recently entering into an ACSA with Sri Lanka. The studied Indian silence on the US-Sri Lanka deal is in sharp contrast to earlier times when India would be wary of such moves to expand US military presence in its neighbourhood. India's silence on the US-Sri Lanka ACSA is a pointer towards its own willingness today to provide similar military facilities to the US under the LSA. Facilities used under ACSA or LSA can be virtually the same as that available in permanent military bases. Hitherto, Diego Garcia is the only military base that the US has in the Indian Ocean, which too was once the focus of much objection by India. *What are the security considerations on the basis of which India is looking favourably at the increasing military presence of the US in the Indian Ocean region? How does India stand to gain by providing military facilities to the US forces under the LSA?*

#### JOINT MILITARY EXERCISES

One of the most visible manifestations of the growing military ties between India and the US has been the increasing frequency and complexity of the military exercises between the two. Of added concern is the fact that these exercises of late have also involved the militaries of different US allies, giving such exercises the complexion of an incipient military alliance. According to Defence Ministry's figures provided in August 2007, 11 army exercises, 5 naval exercises and 3

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air exercises have been conducted jointly with the US since 2004. This is more than the number of joint military exercises that India had with any other country during this period.

In November 2005, India and the US conducted their hitherto largest naval exercise in the Arabian Sea off the Goa coast. Even this was dwarfed by the quadrilateral naval exercises in the Bay of Bengal involving the US, Japan, Australia, Singapore and India, in September 2007. The deployment of aircraft carriers and anti-submarine manoeuvres conducted during the naval exercises make it amply clear that they were not simply meant for maritime security or anti-piracy operations. These exercises aim at promoting closer military-to-military ties, greater familiarity with each other's equipment and operational systems, and above all interoperability in joint operations. Visiting US Pacific Commander Admiral Timothy Keating said as much during the quad exercises and raised concerns across the region by adding that India and the US shared a mutual interest in the security of the Malacca Straits. It is curious, to say the least, that the UPA government did not think it appropriate to insist that the Malabar exercises, given their stated objectives, should also have involved the three important littoral states of the straits of Malacca—Thailand, Malaysia and Indonesia. These three countries have sought a joint regional initiative in the ASEAN, an approach that does not suit the US geopolitical objectives. However, the reason why India chose the US, Japan and Australia for the joint exercises and excluded its immediate neighbours in the Southeast Asian region remains unclear.

India has also allowed US special forces to train with their Indian counterparts in specialized camps for mountain warfare in Ladakh and counter-insurgency jungle warfare in Vairangte, Mizoram. These exercises are clearly aimed to provide immediate assistance to on-going US special forces operations in the “war against terror”, in Afghanistan and Philippines. The joint air exercises, especially the Cope India series, raise other issues of concern. Specifically upon US

request, India fielded its Russian-origin Su-30 fighters in these exercises 'against' US F-16s. The US, which previously had no experience of the Su-30s, was provided with valuable insights into this frontline aircraft used by both China and Russia.

The frequency and pattern of the Indo-US joint military exercises raises serious concerns regarding India joining a US-led military alliance in Asia, which some commentators have termed as an "Asian NATO". Such a military alliance would obviously suit the interests of the US, since in India they would get a major *Asian ally*. *Question arises, whether such a military alliance with the US serves India's geostrategic interests in Asia? Wouldn't it adversely affect India's ties with traditional friends like Russia? Would it not antagonise friendly nations in West and South East Asia and detract from improving relations with China?*

#### PURCHASE OF US MILITARY HARDWARE

One of the more direct benefits to the US from increased joint exercises and promotion of interoperability between the armed forces, as envisaged under the Defence Framework Agreement, is the stepped-up Indian demand these are likely to trigger for US military hardware. The more the two countries exercise together, the greater the rationale to provide India with compatible equipment, communications and technologies. US Under Secretary Nicholas Burns, in his on-the-record briefing on the 123 Agreement in July 2007 stated: "...now that we've consummated the civil nuclear trade between us, if we look down the road in the future, we're going to see far greater defense cooperation between the United States and India: training; exercises; *we hope, defence sales of American military technology to the Indian armed forces*". (emphasis added) The US side seems to be quite clear about the linkage.

Indian defence purchases from the international market are projected to be around \$30 billion during the Eleventh Plan period. It is evident that the US is eyeing this huge Indian

market and seeking to bag multi-billion dollar contracts for US defence firms. Major sale of US military hardware to India has already commenced with the refurbished US warship USS Trenton for around \$48 million along with six UH-3H Sea King helicopters for another \$39 million. The other large transaction is the acquisition of six US-made Hercules C-130 J military transport aircrafts along with spare engines, missile-warning systems etc. for over \$1 billion. Apprehensions have been expressed that the US is set to emerge as the largest supplier of defence equipment to India, replacing traditional suppliers like Russia. The contract for the 126 multi-role combat aircrafts worth around \$10 billion, for which two US firms have already been shortlisted, would be a test case.

While the Defence Framework Agreement speaks of “increased opportunities for technology transfer, collaboration, co-production, and research and development”, what is taking place is simple sale of US military hardware, carefully selected by the US to fit in with their strategic plans in South Asia and the wider Asian region. Just as the “full civilian nuclear cooperation” has turned out to be anything but full, with dual-use technologies being denied even as per the 123 Agreement, so too in defence cooperation. Interestingly, the US-India CEO Forum Report, released during the Bush visit, while talking about the integration of “Indian private sector companies into the global supply chain of US defense manufacturers, combined with co-production” on the one hand, also recommended the adoption of a “liberal offset regime” in India on the other. This would imply a dilution of the current Indian policy, which requires compulsory sourcing of at least 30 per cent of all defence imports from domestic industry for purchases over Rs 300 crores. US pressure to use “indirect offsets” in the name of “global best practices” is basically meant to avoid technology transfers.

*Question therefore arises whether dependence upon defence supplies from the US serves India's interests? The*

## Left Parties' Note: Implications for Foreign Policy

*Bush administration considers Pakistan as its foremost ally in its “war against terror”. President Bush has recently rewarded Pakistan by approving the sale of F-16s, which had been blocked earlier. While the US continues its strategic partnership with Pakistan, selling it force-multipliers and assuring it that it would do nothing to upset the balance of power in South Asia, does it make sense for India to rely on the US as a major supplier of defence equipment?*

### SUMMING UP

The Defence Framework Agreement signed with the Bush administration by the UPA government is a major deviation from the NCMP. The Defence Framework entails a military alliance with the US, which not only finds no mention in the NCMP but also goes against the commitments made regarding promoting multipolarity and pursuing an independent foreign policy. Growing military collaboration with the US would harm India's security interests.

### NOTES

<sup>1</sup> Ashley J. Tellis, “What Should We Expect from India as a Strategic Partner?”, in Henry Sokolski (ed.), *Gauging US-Indian Strategic Cooperation*, Strategic Studies Institute, March 2007.

<sup>2</sup> K. Subrahmanyam, “Partnership in a Balance of Power System”, *Strategic Analysis*, Vol. 29, No. 4, Oct-Dec 2005.

**UPA**

# **Response to Left Parties' Note on Foreign Policy and Security Matters**

**October 5, 2007**

## INTRODUCTION

**Assertion:** The 123 Agreement cannot be regarded as a stand-alone project; it forms an integral part of a broader Indo-US strategic alliance . . . “congruence” with US’ foreign policy also amounts to a subversion of India’s independent foreign policy.

**Response:** India today has strategic partnerships and relations with 12 countries and the EU. A list of these partnerships is attached. We do not see these partnerships as in any way restricting India’s ability to pursue her national interests. If anything, these partnerships help India to pursue her interests. The primary goal of India’s foreign policy is to assist the domestic transformation of India’s economy and society and to improve the welfare of the Indian people. For this purpose, we have pursued non-alignment as a means to enhance our strategic autonomy and freedom of choice. The 123 Agreement meets this test.

The a priori assumption that “congruence with US foreign policy amounts to subversion of India’s foreign policy” in fact limits India’s ability to pursue an independent foreign policy. India’ national interest has been and will be the only consideration while taking a position or action. If such actions have the support of USA, Russia or China or any other

country, we will welcome that support.

## I. INDIA'S FOREIGN POLICY

### 1. IRAN

**Assertion:** "There was a complete volte-face by India during a vote on Iran in the IAEA".

**Response:** India's vote on the IAEA resolutions on Iran is in keeping with our consistent position that confrontation should be avoided and that the Iranian nuclear issue should be resolved through dialogue in cooperation with the IAEA. India worked with other NAM countries to balance the IAEA resolution which recognized the right of Iran to peaceful uses of nuclear energy consistent with its international commitments and obligations. The February 2006 resolution, for instance, had the support of Russia, China, Brazil, Egypt and several NAM members.

The fact is, however, that the IAEA has catalogued nuclear activities in breach of Iran's commitments under its Safeguards Agreement, and that Iran's clandestine collaboration had its source in Pakistan. No explanation of this has been made to us. India cannot afford to turn a blind eye to security implications of such activities.

Some progress has recently been made in resolving outstanding issues between Iran and the IAEA, and a work-plan has been agreed between DG IAEA and Iran which will now be implemented to resolve outstanding verification issues.

**Assertion:** The UPA government fights shy of constructively engaging Iran which is most evident in slowing down on the Iran-Pakistan-India gas pipeline project... India had envisioned a "strategic partnership" with Iran "for a more stable, secure and prosperous region and for enhanced regional and global cooperation". [India-Iran New Delhi Declaration, January 2003]. Can the UPA Government assure that the Iran gas pipeline project will go ahead despite the slowdown in the recent period?



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**Response:** The New Delhi Declaration, signed during President Khatami's January 2003 visit, lays down a five year target oriented framework focusing on key areas like political dialogue, oil and gas, bilateral trade and economic cooperation and investments. All these continue steadily.

Based on its own independent and objective interests and position, India continues to develop cooperation with Iran in areas of mutual interest such as energy and transit. Specific projects being taken forward include the development of the Chahbahar Port, the North-South corridor and proposals to broaden and deepen economic cooperation. The touchstone in decisions on economic cooperation projects will remain their technical and economic feasibility. India also continues to engage with Iran in the search for regional stability, particularly in Afghanistan.

In the case of the Iran gas pipeline project through Pakistan, Government is continuing discussions with both Iran and Pakistan so as to secure a technically and economically viable project, while minimizing security and other risks, so as to assure natural gas supplies to India at a reasonable cost. India remains firmly committed to establish a long-term, cost-effective and secure mode of transfer of gas from Iran.

India – Iran relations stand on their own. They are independent of our engagement with Third countries.

## 2. IRAQ

**Assertion:** Stance taken by the UPA government on the execution of Saddam Hussein and on the elections in occupied Iraq in December 2005 were deplorable.

**Response:** India's response to the death of former President Saddam Hussein was clear and consistent, reflecting the primacy that we attach to the welfare of the Iraqi people and the need for enabling a process of reconciliation and restoration of peace in Iraq. Reactions by other governments such as China and Russia were similar in tone.

On the overall situation in Iraq, Government's stand has been consistently guided by the unanimous resolution adopted

by both Houses of Parliament in April 2003. Since then India has been associated with various steps to contribute to the rehabilitation and reconstruction of Iraq and is assisting Iraq in capacity building and development of human resources. India's humanitarian assistance includes the supply of milk powder and fortified food to Iraqi school children.

### 3. PALESTINE

**Assertion:** The UPA Government has incrementally distanced itself from the Palestinian cause.

**Response:** India continues to be deeply engaged in the Palestinian cause. At the request of the Palestine Government, India sent observers to the Parliamentary elections in Palestine in January 2006. India has also been quick to condemn violence and the disproportionate use of forces by Israeli armed force against civilians when conflict broke out in Gaza and later in the West Bank, in statements by the Ministry of External Affairs and by the Prime Minister in both Houses of Parliament. India's support to the Palestine cause has been repeated on several occasions; most recently at the 19<sup>th</sup> Arab League Summit in March 2007 and following the formation of new emergency government of President Abbas on 17 June 2007. Nor is there any change in India's active support to the cause of Palestine in all UN fora. In 2007, as in 2006, India voted in favour of all UN resolutions on Palestine, including key resolutions on Palestine statehood and against the construction of security walls on Palestinian territory.

### 4. ISRAEL

**Assertion:** The UPA Government has remained silent about the highly provocative Israeli air attack on Syria on 6 September 2007.

**Response:** Syria's reaction to the Israeli air raid has been limited to a complaint to the UN Secretary General and UN Security Council without actually demanding retaliatory action. Arab reactions have been muted and no major developing country apart from Iran has commented on the

incident in public.

India's relations with Israel are distinct and differentiated from India's relations with Palestine, nor do they impact on our relations with other Arab nations.

#### 5. LOOK EAST POLICY

**Assertion:** The politics of creating rival blocs in Asia, which underlies the vision of preserving the “balance of power in Asia” is shared by the US and Indian strategic establishment. India has embarked upon a quadripartite strategic tie-up with the US, Japan and Australia.

**Response:** The record shows that India's Look East policy in its initial years was primarily economic: India's trade with ASEAN increased almost 10 times from US\$ 2.4 billion in 1990 to US\$ 23 billion in 2005. Upon the economic basis which has been created, recent years have seen considerable movement towards institutional arrangements such as the East Asia Summit, India's dialogue partnership with ASEAN and accelerated discussions on free trade arrangements between India and ASEAN and India and individual ASEAN countries. Given the significance of the region to India's security, we have engaged in dialogue and practical security cooperation bilaterally and through the ASEAN Regional Forum (ARF), which is the only political and institutional security forum in the region. We have also engaged with ASEAN, Far Eastern and Pacific countries on issues such as counter-terrorism. *While some ideas about a quadrilateral dialogue have been suggested by Japanese leaders, India has taken no action in the matter.*

#### 6. SHANGHAI COOPERATION ORGANISATION

**Assertion:** Indian policy toward the Shanghai Cooperation Organisation (SCO) has become noticeably lukewarm. India was the only country among the SCO's members and observers that was not represented at the head of state/government level at the Shanghai Summit.

**Response:** India became an observer at the SCO Summit

Meeting in Astana in July 2005. India remains interested and has formally communicated its interest in specific projects to the SCO Secretariat in Beijing eighteen months ago. A response is awaited. The SCO itself is reportedly divided on the issue of whether to admit fresh members and on the level of involvement of observers. (Observers presently do not participate in the deliberations to finalize summit documents or in any other way in the summit except a five-minute presentation at the plenary.) India has, therefore, consistently been represented at Cabinet Minister level at SCO Summits.

#### 7. AFGHANISTAN

**Assertion:** The UPA Government has viewed the Afghanistan problem exclusively through the prism of the Bush administration's "war on terror".

**Response:** To say so flies in the face of fact and denigrates the efforts of 3,500 Indians who are presently engaged in the reconstruction of Afghanistan. India's involvement and commitment to a peaceful, stable, democratic future for Afghanistan cannot be questioned given the scale and intensity of our effort and involvement in Afghanistan consistently over the last six decades. This independent engagement, at considerable cost, was recognized in the Bonn process and by India hosting the Regional Economic Cooperation Conference on Afghanistan in November 2006 in New Delhi. The nature of our projects and the type of our engagement negates any statement that Afghanistan is regarded only as an object of any so-called war on terror.

## II. DEFENCE CO-OPERATION WITH THE US: IMPLICATIONS FOR INDIA'S SECURITY

### DEFENCE FRAMEWORK AGREEMENT

**Assertion:** In the history of independent India, this is the first time such a far-reaching defence cooperation agreement (New Framework of the US-India Defence Relationship) has

been signed with any country. This unmistakable move towards cementing a strategic and military alliance with the US goes against the understanding on foreign and security policies contained in the NCMP.

**Response:** The 2005 Defence Cooperation Agreement with the USA is not the first such agreement to be signed with any other country. Nor are its terms a radical departure from other such agreements. The 2005 Defence Cooperation Agreement was debated at length in the Rajya Sabha and the Raksha Mantri in his reply had given clarifications on each and every point raised.

India has been strengthening ties in the defence and military field with various countries.

Since 1996, India has entered into 30 *Defence Agreements* with other countries including Russia, Germany, Chile, Oman, Mozambique, Australia, South Africa, UK and Northern Ireland, Kyrgyz Republic, Hellenic Republic, Indonesia, Iran, Kazakhstan, Poland, Armenia, UAE, Seychelles, Tanzania, Singapore, Czech Republic and Brazil.

We have also established mechanisms for defence cooperation with countries like *Malaysia, Vietnam, Indonesia, Australia and Laos, Japan and the ROK*. With the European Union and individual member countries, the co-operation covers training exchanges, joint exercises and defence procurement, production and R&D. Mechanisms for security dialogue exist with *France, UK, Italy and Poland*. Defence-related exchanges have also been expanding with other countries like *Germany, the Czech Republic, Ukraine and Belarus and other Central Asian countries*. With *Russia*, acquisition, licensed production, R&D and product support have been the focus of discussions.

The Raksha Mantri visited *China* in *May 2006* and signed an MOU for exchanges and cooperation in the field of defence – including joint military exercises training programmes in the fields of search and rescue, anti-piracy, counter-terrorism and other areas of mutual interest.

The 2005 Defence Framework Agreement with the USA

updates an agreement signed twelve years ago in 1995 on Defence Relations between the United States and India.

#### MULTINATIONAL OPERATIONS

**Assertion:** One of the provisions of the Defence Framework Agreement states that that the India and US defence establishments shall “collaborate in multinational operations when it is in their common interest”. Through this provision on multinational operations India has accepted the US concept of multinational operations that might be undertaken in third countries outside of the UN auspices. The UPA Government therefore owes an explanation as to where it is that Indian Armed Forces could collaborate with US forces in multinational operations.

**Response:** As a sovereign state with independent foreign policy decision making, India's engagement in third countries is determined by India's own calculation of her own interest and the request of the receiving state, and is not contingent upon UN auspices. For instance the use of Indian forces in Bangladesh (1971), Sri Lanka (1978 – 91) and Maldives (1988) were decided upon this basis. Whether or not Indian forces participate in multinational operations in third countries will also be decided upon the same basis.

The relevant provision of the 2005 India – US Defence Framework Agreement is qualified by the phrase “*when it is in their common interest*”. India will decide when and in what manner it will collaborate with the United States in multinational operations. For instance, India has not participated in the US led coalition operations in Iraq and Afghanistan.

#### MISSILE DEFENCE SYSTEM

**Assertion:** UPA Government professes commitment to a multipolar world order and on the other hand seeks to collaborate with the US missile defence. The UPA Government's inclination to participate in the NMD can strain India's traditional ties of friendship and cooperation

with Russia. It may also complicate the attempts to forge trust and mutual confidence in India-China relations. Do India's interests lie in dovetailing its security interest with the global strategies of the US, like pitting the transatlantic against Russia or dividing Asia into blocs? What is the commonality of interest between India and the US, as far as the initiative on the missile defence system is concerned?

**Response:** India is not participating in the NMD. There is no cooperation with the US on development of missile defence.

#### MARITIME SECURITY COOPERATION

**Assertion:** The Indo-US Maritime Security Cooperation Framework aims to give US greater strategic depth in South East Asia and Asia Pacific waters by leveraging Indian naval strength while reducing its own profile in the region. The Indo-US Maritime Security Cooperation Framework has also raised suspicion of being a part of a strategy of containing China and excluding it from the security architecture of the Malacca Straits and other vital sea lanes in the South East Asia. How does India stand to gain from such a security architecture of the Malacca Straits?

**Response:** India attaches importance to the security of sea lanes as this is vital to our economy. As much as 90 per cent by volume of our foreign trade transits over the seas. Our geographical location ordains that we play an active role in promoting maritime security in the Indian Ocean Region. We are pursuing this in a cooperative framework, in expanding circles of engagement. The Indian Navy has taken a number of initiatives for meaningful cooperation with the Navies of the region. Conduct of bilateral exercise is not limited to USA but has been institutionalized with a number of countries like Russia, France, Oman, Singapore, Thailand, etc. Our Maritime Security Cooperation recognizes the primacy of the littoral States (Malaysia, Indonesia, Singapore, Thailand) in the security of Malacca Straits and our policies have been shaped accordingly.

We are also engaged with littoral and user states of important sea lanes of communication and have offered to build capacity for maritime security and safety. The ASEAN Regional Forum (ARF) of which both India and China are members now includes regular discussions on maritime security issues.

#### LOGISTICS SUPPORT AGREEMENT

**Assertion:** The LSA is not simply an agreement governing minor courtesies extended by one friendly country to another. Extension of such services has clearly a military purpose; in fact, they are designed for use during military operations. The LSA is nearly a different terminology for Acquisition and Cross-Servicing Agreements (ACSA). All the goals and operational requirements remain the same, namely interoperability between the armed forces with provision for use of base services, logistics support and borrowing of equipment for urgent use. India's silence on the US – Sri Lanka ACSA is a pointer towards its own willingness to provide similar military facilities to the US under the LSA. What are the security considerations on the basis of which India is looking favourably at the increasing military presence of the US in the Indian Ocean region? How does India stand to gain by providing military facilities to the US forces under the LSA?

**Response:** We have not signed any Logistic Support Agreement with the USA. The other questions, therefore, do not arise.

#### JOINT MILITARY EXERCISES

**Assertion:** One of the most visible manifestations of the growing military ties between the US and India has been the increasing frequency and complexity of the military exercises between the two. The frequency and pattern of Indo-US joint military exercises raises serious concerns regarding India joining a US-led military alliance in Asia which commentators have termed as an Asian-NATO. Question arises whether



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such a military alliance with the US serves India's geo-strategic interests in Asia. Wouldn't it adversely affect India's ties with traditional friends like Russia? Could it not antagonize friendly nations in West and South East Asia and detract from improving relations with China?

**Response:** The interaction of Indian Armed Forces with armed forces of other countries through activities that include training, joint exercises, etc, increases their own competence and tests their preparedness in a non-battle field environment. The nature and frequency of such cooperation and exchanges is solely determined based on the requirements of the Indian armed forces and benefits accruing to us.

India's defence ties with countries in the region and beyond have continuously increased in recent years – as our forces and our defence production have gained recognition as among the best in the world.

India conducts joint exercises with a number of countries including Russia, China and countries of South East Asia. These exercises cover areas like counter insurgency, high altitude mountain warfare and jungle warfare. It may be pointed that countries mentioned in Left Parties' Note include both Russia and China also conduct joint exercises with the USA.

#### JOINT EXERCISES WITH FOREIGN DEFENCE FORCES SINCE 2002

Conducting joint exercises is not unique to USA. The Indian Army has been conducting such joint exercises with foreign countries since 2002. Regular exercises are now planned with Russia, China, UK, USA, Thailand, Seychelles, Mongolia and Maldives.

#### PURCHASE OF US MILITARY HARDWARE

**Assertion:** One of the more direct benefits to the US from the increased joint exercises and promotion of interoperability between the armed forces envisaged under the Defence Framework Agreement is the stepped up demand that these

are likely to trigger for US military hardware. While the US continues its strategic partnership with Pakistan selling its force-multipliers while assuring it that it will do nothing to upset the balance of power in south Asia, does it makes sense for India to rely on the US as a major supplier of defence equipment?

**Response:** India's acquisition of defence equipment will be in accordance with the Defence Procurement Policy which prescribes the procedure to be followed in making acquisitions of defence equipment – duly taking into account the extent to which the competing bids satisfy our technical, financial and offsets requirements as prescribed in the DPP 2006 (our offsets policy envisages joint development, co-production and technology transfer). Government has laid out a transparent policy of acquisitions wherein Requests for Proposals are circulated to a number of countries. Currently, our defence procurements are sourced from Russia, Israel, Germany, France, UK and South Africa. USA will, like other competitors, participate on a level playing field.

#### SUMMING UP

**Assertion:** India's strategic alliance with US has cast its shadow on India's policy. A strategic partnership with the US cannot go hand in hand with the NCMP commitment of pursuing an independent foreign policy.

**Response:** Despite the changing world order, the fundamental tenets of India's foreign policy have remained remarkably steadfast and unaltered and successive Governments have reinforced these guiding principles. At the core is our independence in decision making on foreign policy issues. The principles of *Panchsheel*, enunciated by India's first Prime minister are still relevant and we have, over the years, on every occasion, reiterated our commitment to an independent foreign policy – and the strengthening of multi-lateral mechanisms and institutions.

India's foreign policy has been pragmatic in its orientation and approach – not driven by ideology,

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maintaining and strengthening good relations with both blocs of the Cold War. At the same time, India did not refrain from expressing her position on important issues – as when she supported Egypt during the Suez crisis.

India has advocated, since her independence, general and complete disarmament – and made such far-reaching proposals in 1950s on cessation of nuclear testing and production of fissile material. Here, too, while actively involved in NPT negotiations, India eventually stepped back from signing on to the Treaty as she saw that the Treaty did not meet India's security interests – and was discriminatory as it legitimized the possession of nuclear weapons only by the P-5.

While pursuing the goals of disarmament and non-proliferation, India developed, in her own national interest, an indigenous strategic programme. Even in the face of the consequences that followed her Peaceful Nuclear Test in 1974, India reiterated her need and intention to maintain a credible minimum deterrent, and kept in view the implications for India's security of the emergence of nuclear weapons states on our borders.

India is recognized in today's world as an independent minded nation. In fact, India's national interests require that it should maintain this while simultaneously cultivating close ties with key global players and playing a key role in global affairs – whether trade or security or climate change issues. India today has strategic dialogues with Brazil, China, EU, France, Germany, Iran, Indonesia, Japan, Russia, South Africa, the United Kingdom, United States of America and Vietnam.

Our international friends and partners recognize our commitment to pursue an independent foreign policy. They understand that a country like India cannot be persuaded to follow a course in its foreign policy which does not pass the litmus test of meeting our interests. If India could exercise autonomy in its decision-making during the cold war period, there is no reason to believe that today, when our strength as

## UPA's Response on Foreign Policy and Security Matters

a global power is recognized, we can be coerced into following a foreign policy dictated by another country.

## **Left Parties**

# **Rejoinder to UPA's Response on Foreign Policy and Security Matters**

**October 22, 2007**

The Left Parties appreciate the prompt response by the United Progressive Alliance vide its Note dated October 5, 2007 on the subject. Regrettably, however, most of the issues and questions raised in the Left Parties' Note dated October 2, 2007 have not been adequately addressed in the UPA's response. Any substantial and meaningful discussion can emanate only when the issues raised by the Left Parties are addressed effectively.

### **FOREIGN POLICY ISSUES**

**1. Strategic Relations with US:** As far as the Left Parties are concerned, the National Common Minimum Programme (NCMP) should guide the foreign policy orientations of the UPA government, rather than subjective and unilateral perceptions of "national interests". The touchstone should be whether the government follows an independent foreign policy aimed at promoting multi-polarity in world relations and opposing all attempts at unilateralism. The issue is not the statistical data as to India's strategic partnerships and relations with the world community. It is about India's relations with the US, which are not envisaged in the NCMP as a strategic relationship. The nature, scope and depth of the "strategic partnership" with the US are at a qualitatively

different level, making it virtually a strategic alliance. The 123 Agreement forms part of a “strategic partnership”, and influential Indian and US strategic thinkers have dwelt on the parameters and directions of such a partnership. Indeed, the text of the 123 Agreement itself acknowledges this in its preamble. The so-called Hyde Act makes explicit reference to this aspect. The UPA's Note is impervious to the understanding of independent foreign policy in the NCMP, and characterises it as an “a priori assumption”.

**2. Iran:** It needs no reiteration that the final Indian stance at the IAEA vote on Iran in September 2005 was on the basis of last-minute instructions at the highest levels of government. While it is natural that a laboured attempt became subsequently necessary for the Indian side to explain away the shift in the UPA government's stance as a “consistent position”, the fact remains that the shift as such was prompted by the US pressure at the highest levels of government. Indeed, US officials and public figures – and even the Hyde Act – acknowledged that India was “able and willing to adjust its traditional policies” with regard to Iran. No amount of pleas regarding “national interests” can cover the fact that the shift in India's stance has negatively impacted on Indo-Iranian cooperation, including in the LNG deal. Iranian officials are on record on the matter.

Second, the fact remains that the progress on the Indo-US gas pipeline project has slowed down. This is a veritable reality. Again, the Iranian side, including the concerned officials and diplomats, are on record that India has slowed down the progress of the project, and Iran is, therefore, left with no option but to proceed ahead with Pakistan.

Third, India's votes in the IAEA in September 2005 and February 2006 helped the US to transfer the subject of the Iran nuclear issue to the United Nations Security Council and to impose a sanctions regime against Iran. The US has since then mounted a campaign threatening Iran with military attack and “regime change”. Any balanced, principled Indian

stance should have taken note that Israel is a virtual nuclear power, thanks to clandestine Western collaboration, and the US is blatantly adopting double standards.

**3. Iraq:** It is a fact that all that the UPA government could say about the execution of Saddam Hussein was that it was a matter of “disappointment”. The Indian statement completely overlooked the sort of “unilateralism” by the US that the NCMP precisely finds abhorrent in the conduct of international relations. Motivated solely by the urge not to cause annoyance to the US, the UPA government ignored the fact that India’s relations with Iraq are in no way comparable to China’s or Russia’s with that country. The reality is that the UPA government is silent in the face of the war crimes being perpetrated by the US in Iraq. The continued military occupation of Iraq is the root cause of the anarchy in that country. Yet the UPA government remains silent on that score in deference to the compulsion not to annoy the US or to pose difficulties for the US regional policies in the Middle East. The UPA government’s vulnerability at a time when the nuclear deal is under negotiation is all too apparent.

**4. Palestine and Israel:** The UPA government has continued with the previous NDA government’s policy towards the Palestine issue. While keeping up verbal support to the Palestinian cause, UPA government has rapidly expanded India’s relations with Israel. Considering the atrocities being perpetrated by the Israeli regime against innocent, defenceless Palestinian communities, the UPA government’s policy is regrettable, both in moral and practical terms. It is not even expedient in so far as it may find acceptance with the pro-US Arab regimes in the region but is completely contrary to the opinion and feelings of the Arab people. This is particularly so because the UPA government is emphasising security and military cooperation with Israel involving precisely those agencies of the Israeli government that carry out the atrocities against the Palestinians. The UPA

government entered into arms purchases from Israel worth \$1.5 billion as of 2006. India has emerged as the largest buyer of arms from Israel. Yet, Israel does not figure even cursorily in the text of the NCMP. The UPA government's zealotry in expanding and deepening India's security relationship with Israel cannot be sidetracked in any discussion over the UPA government's policies in the Middle East.

**5. "Look East" Policy and the Strategic Dialogue with US, Japan and Australia:** The UPA should clarify whether India has participated in a strategic dialogue with the US, Japan and Australia. If so, what is the rationale for such a limited grouping? The outgoing Japanese ambassador to India has been quoted in an interview to *The Hindu* on October 1, 2007 that yet another round of the strategic dialogue is in the offing in the near future, and that there is a thinking to raise the dialogue to foreign minister level. Is it so? How does this dialogue mesh with India's "Look East Policy"? It is well known that the US, Japan and Australia have a tightly knit security coordination, which more often assumes the form of a de facto military alliance. How is India's security interest served by its cooperation with the US-led exclusive security grouping in the Asia-Pacific when the ASEAN Regional Forum already includes all the relevant countries in the Asian region?

**6. Shanghai Cooperation Organisation:** The Shanghai Summit in 2005 was not a routine meet of the Shanghai Cooperation Organisation (SCO). Yet, India was the only country not to be represented at the summit at the head of state/government level. This is a statement of fact. What was the basis for the Indian decision to keep its representation at the 2005 extraordinary summit at the ministerial level? Wasn't this yet another signal regarding India's growing harmony with the US's regional policies, which takes a negative view regarding the SCO?

**7. Afghanistan:** India should contribute optimally to the



reconstruction of Afghanistan, which has profound links with India. But at the same time, India cannot be oblivious of the establishment of the long-term, virtually open-ended, military presence of the US and the North Atlantic Treaty Organization in India's neighbourhood. Second, India cannot ignore the killings of civilians being perpetrated by the Western forces present in Afghanistan. Third, the political rationale of the "war on terror" is becoming apparent with the ongoing efforts by the Western powers to accommodate the Taliban in the power structure in Kabul. Finally, the presence in Afghanistan is enabling NATO to make efforts to expand into the Central Asian region and to establish a naval presence in the Arabian Sea and the Indian Ocean. The US is using Afghanistan as a base from where it can threaten Iran. The growing opposition to the Western military presence among the Afghan people is leading to increased support for terrorists and fundamentalist elements in the region. All this directly affects the security environment around India. Yet, the UPA government remains silent on this score. It has not taken any initiative to address these security challenges, as it remains riveted to the one-point agenda of harmonising its policy with the US regional policy in Afghanistan and Central Asia.

#### DEFENCE AND STRATEGIC ISSUES

**1. Defence Framework Agreement and "Multinational Operations":** The issues raised by the Left Parties regarding the Defence Framework Agreement with the US should not be treated in a cavalier fashion, since they will profoundly impact on India's security interests for decades to come. It is the contention of the Left Parties that the NSSP and the Defence Framework Agreement remain by far the most far-reaching defence cooperation agreement with any country in the history of independent India. No comparison can be drawn between the defence agreement with the US and India's defence cooperation agreements with Kyrgyz Republic or Armenia. The issues that deserve special attention are:

## Left Parties' Rejoinder to UPA's Response

I. The UPA Note says, "India will decide when and in what manner it will collaborate with the United States in multinational operations". Is this a new policy? In 60 years of independence, has India ever participated in a "multinational operation" outside the UN umbrella?

II. Apart from the "use of Indian military force" in Bangladesh (1971), Sri Lanka (1987-91) and Maldives (1988), has India ever used its military force outside the UN umbrella in any part of the world? If so, what are the kind of "multinational operations" that are being envisaged where India and US can jointly participate? Can the UPA categorically assure that such "multinational operations" will never be outside the UN auspices?

III. Other than with the US, has India entered into any defence agreements with any other country in the world for undertaking "multinational operations"? Is the agreement with the US an exception or a common feature of the 30 Defence Agreements that India has signed with other countries?

**2. Missile Defence:** It is well known that the US missile defence system (NMD) is under development and the first deployments outside the US mainland are under way. The UPA's Note is factually correct in maintaining that "India is not participating in the NMD". However, it is well known that the US does not allow even its close allies to "participate" in the NMD programme. Thus, the issue is not about "participation" or "development" of the NMD alone, but about its deployment. In an answer to a question in the Lok Sabha on August 18, 2004, the Minister of State for External Affairs stated that "presentation and briefing by the US side on missile defence have been on the agenda of the Indo-US Defence Policy Group since 2001". Why should NMD form part of the NSSP? Is it a fact that the UPA government has held discussions with the US more than once regarding cooperation in the NMD? Is it a fact that the NMD figures

in the agenda of “strategic dialogue” between the Indian defence officials and their American counterparts in the Pentagon? Is it a fact that the US has sensitised the Indian side, including through demonstrations, on the components of the NMD system? More important, does the UPA government recognise that any sort of involvement with the NMD would impact negatively on India’s relations with Russia and China?

**3. Maritime Security Cooperation:** There is no gain saying the fact that India has concerns over maritime security. The issue here is of the rationale behind the Indo-US Maritime Security Cooperation Framework, covering the South-East Asian and the wider Asia-Pacific region. How does India stand to gain from the US-led security architecture of the Malacca Straits?

**4. Logistics Support Agreement:** It is true that India has not yet signed any Logistic Support Agreement with the US. The question is whether the UPA government has all but negotiated a draft for such an agreement, as claimed by senior US officials. If that is the case, what is the rationale for negotiating such an agreement? Is the UPA government aware of the negative impression that such a close identification with US naval power would create in India’s adjacent regions?

**5. Joint Military Exercises:** The UPA should clarify whether the bulk of India’s military exercises during the last 5 years period have been with the US? If so, what is the rationale for developing such an intensive level of “interoperability”? How does such close military cooperation with the US serve India’s geo-strategic interests? Has India ever conducted a collective military exercise before the joint military exercises conducted in the Bay of Bengal in September 2007? The rationale advanced by the UPA government for the recently held Malabar exercises – as forming part of a struggle against sea piracy and drug trafficking or for

rendering relief work during natural disasters – does not sound convincing. It is all too apparent that the size of the naval exercises was extraordinarily large and it was a carbon copy of a similar naval exercise involving the US, Australia and Japan in the Asia-pacific. What is the rationale for the joint naval exercises involving the US, Japan and Australia? Why weren't India's immediate neighbours in the South East Asian region, including major countries such as Thailand, Malaysia and Indonesia, included in these joint naval exercises?

**6. Arms Purchase from the US:** The UPA should respond to the specific questions raised in the Left Parties' Note dated October 2, 2007 regarding the contradictions involved in dependence upon defence supplies from the US. These remain unanswered, especially the implications for India-Pakistan relations. The issue is not about the UPA government's "transparent policy of acquisitions" of weapons for the armed forces. The Bush administration considers Pakistan as its foremost ally in its "war against terror". President Bush has recently rewarded Pakistan by approving the sale of F-16s, which had been blocked earlier. While the US continues its strategic partnership with Pakistan, selling it force-multipliers and assuring it that it would do nothing to upset the balance of power in South Asia, does it make sense for India to rely on the US as a major supplier of defence equipments?

#### SUMMING UP

What needs to be reiterated all over again is that the UPA government during its period in office has overlooked the commitment to an "independent foreign policy", as reflected in the NCMP. The departures are of major character. Admittedly, diplomacy can be pragmatic; it can and must safeguard national interests. But the foreign policy on which diplomacy is based, must always remain true to the guiding principles. The NCMP underlines that the guiding principle for the UPA government must be an "independent foreign policy". The NCMP further stresses the importance of the

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UPA government working for a “multipolar” world and opposing all attempts at “unilateralism”. These are fundamental principles. They demand that India must speak its mind clearly and unambiguously over issues such as Iraq, Palestine and Afghanistan, where the US is the principal source causing, instigating or conniving with aggression, occupation and state sponsored violence.

As the UPA’s Note recalls, what India did in the Suez crisis 50 years ago is a matter of pride for the country. More important, in the present juncture, it should remain a beacon light for India’s policies in the Middle East. India should have the courage to dissociate itself from the double standards being adopted by the US over the Iran nuclear issue. India should call for the vacation of military occupation of Iraq. India should have the moral courage to maintain that what Israel does to the Palestinians is no less than what the South African apartheid regime did. India should curtail its security and military cooperation with Israel until the historic rights of the Palestinian people are recognised. There are so many countries other than Israel from where India can source its defence materials.

It is clear that the Indo-US nuclear cooperation agreement poses the real danger of locking India into a “strategic partnership” with the US. By the very nature of the relationship, India can only end up as a subordinate ally in the US geo-strategies, aiding and abetting its military misadventures. The Left Parties therefore reiterate their demand for a thorough scrutiny of the implications of the 123 Agreement and the Hyde Act on India’s independent foreign policy.

**UPA**

**Issue-wise Response to  
Rejoinder by Left Parties dated  
22 October 2007**

**November 16, 2007**

**STRATEGIC RELATIONS WITH US**

India has always followed an independent foreign policy. There is no change at all in this. The aim of such a policy is to create conditions where we can focus on the economic development of our people. The Government is, thus, committed to continuously improving bilateral relations with our immediate neighbours, the countries in our region and all other major powers in the world.

In an era where there is increasing interdependence among nations, the development of good relations with all major powers without being constrained by Cold War era thinking of blocs and alliances adds to our ability to pursue our independent path as dictated by our national interest. This provides us the leverage and space to pursue our independent foreign policy.

In this context, Government has pursued cooperation with the USA to the extent that it helps to achieve the goals set by successive governments for the welfare of our people, and in overall national interest.

**IRAN**

India's overall approach to Iran has been clear and consistent. EAM's recent remarks in May 2007 lay out very

clearly the approach towards Iran:

Throughout history, Iran has radiated through Persian language and culture its influence over all its neighbouring countries. In Iran, therefore, we deal with not just a political entity but also a cultural force that takes great pride in its civilizational achievements. I think it is worth reiterating this to ourselves when we deal with that country on difficult issues such as security, non-proliferation, etc. In our view, Iran must be engaged purposefully and candidly –not by demonizing its social and cultural mores but by recognizing their internal dynamic even while we may not accept them for ourselves. For those of us who inhabit the same region as Iran and are aware of the richness of its history and culture, and the pride they take in their civilization, it is axiomatic that threats against or denigration of the country will not work.

Iran has to be mindful of its international obligations, but progress on the issues that concern us will not be possible by the use or the threat of use of force or sanctions. It is only engagement which will enable us to see that Iran views following its international obligations as being in its pragmatic self interest. It is a country of tremendous natural and human resources and the development of these resources will make Iran a factor for regional security. The threat or the implied threat of use of military or economic force will not.

#### IPI GAS PIPELINE

The statements of officials of the Iranian Ministry of Petroleum, that India has slowed down the IPI Project, are only intended to secure better financial terms for Iran in what is a commercial negotiation. On occasion, such statements may also be found in the Pakistani press based on background briefings. Here again, the attempt is to secure more

favourable terms on transit fees.

The facts of the matter are that in the tripartite (India – Pakistan – Iran) meeting in January 2007, a pricing formula was negotiated. Pakistan had declared itself satisfied with the formula and we had agreed to consider it subject to the transit fee and transportation tariff issue being concluded with Pakistan. However, in the next meeting in May 2007, Iran presented a fresh set of proposals by insisting on inclusion of a price revision clause and thus altering the agreed formula. Neither Pakistan nor India could agree to the revised terms. The setback in the negotiations was therefore largely on account of the new Iranian position. Pakistan and Iran in their subsequent meetings have reportedly agreed to a pricing formula. The Government will negotiate with the concerned parties once we know the price of gas at the Pakistan – Iran border.

#### INDIA'S VOTES IN THE IAEA

The IAEA voting allowed India to articulate its principled and balanced stand on the issue. There is no question of double standards as Iran is a non-nuclear weapon state party to the NPT.

The assertion that it was India's votes in the IAEA in September 2005 and February 2006 that helped the US to transfer the subject of the Iran nuclear issue to the UN Security Council and to impose a sanction regime against Iran is incorrect. The breakdown of the IAEA vote in February 2006 is as follows:

Yes	: 27
No	: 3 (Cuba, Syria, Venezuela)
Abstain	: 5 (Algeria, Belarus, Indonesia, Libya, S. Africa)

It is clear that the IAEA Resolutions would have carried even without India's vote. Regardless of India's vote, there was a clear majority in favour of referring the Iran nuclear issue to the UN Security Council. The restrictive measures



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were imposed unanimously by the UN Security Council, where India is not a member.

### IRAQ

The Government has always acted in a balanced and mature manner to developments in Iraq and has consistently been guided by the unanimous resolutions adopted by both the Houses of Parliament in April 2003. It has on every relevant occasion expressed the hope that Iraq would return to full sovereignty and political stability with control over its natural resources. On seeing reports that former President Saddam Hussein of Iraq had been sentenced to death by a Tribunal in Iraq, External Affairs Minister had said that such life and death decisions required credible due process of law and, while not appearing to be victor's justice, also needed to be acceptable to the people of Iraq as well as the international community. Once the sentence was confirmed, the Government had again expressed the hope that the execution would not be carried out and expressed its disappointment once it was carried out. In keeping with its civilizational ties, India wants the people of Iraq to succeed in their efforts towards nation-building and has, on various occasions, expressed this readiness to cooperate in the reconstruction effort.

### PALESTINE AND ISRAEL

India has had a consistent policy of unwavering support for the Palestinian cause right from the days of our freedom struggle under Mahatma Gandhi and this has been continued by the Government. The last dignitary to meet President Arafat was Minister of State Shri E. Ahmad, who was deputed specially by Prime Minister in September 2004 to Palestine to demonstrate to the world India's solidarity with the Palestinian people and their cause. Former EAM attended President Arafat's funeral in November 2004 in Cairo.

India has contributed much in practical terms in the last three years with the grant of more than \$15.5 million for

Palestinian development projects which are under process, in addition to Rs. 10 crores in life-saving medicines delivered to the Palestinian people in 2006. India's support for the Palestinian cause has been reiterated on several occasions, including at the Arab League Summit in Riyadh in March 2007, after the formation of the emergency Palestinian government in June 2007 and most recently at the IBSA Summit in South Africa this month. Our support for a Palestinian homeland and the legitimate rights of the Palestinians is well known. We have welcomed the resumption of direct dialogue between the Palestinian and Israeli leaders. India's relations with the Arab world too have grown in key sectors in the last three years, demonstrating the goodwill for India in these countries.

India's diplomatic relations with Israel were established after the Madrid Peace Process and the establishment of formal relations between Israel and some Arab States. Our relations with Israel are not at the cost of our good relations with the Arab world.

#### “LOOK EAST” POLICY AND THE STRATEGIC DIALOGUE WITH US, JAPAN AND AUSTRALIA

The process of consultations between the US, Japan, Australia and India is an informal dialogue between the four countries to discuss issues of common interest. Our approach to this dialogue is reflected in the Joint Statement signed between the Prime Ministers of India and Japan in December 2006, in which, they agreed to share view with other “like-minded countries” in the Asia-Pacific region on themes of mutual interest. This informal consultation is *not* an exclusive group. Our understanding is that other like-minded countries could be included in this process in the future. It is also clear to all parties that this is *not* a strategic dialogue or strategic consultative mechanism. At the informal consultation between senior officials held in the margins of the ASEAN Regional Forum (ARF) Senior Officials' Meeting in Manila on 25 May 2007, the concerned countries agreed to discuss

non-core security matters. These include possibilities of cooperation on issues like counter terrorism, anti-piracy, disaster relief, energy, environmental issues, counter-narcotics trade and response to pandemics.

While it is true that the ARF is a broader platform for discussions on security issues, it is also true that there are other smaller frameworks for dialogue and cooperation based on the degree of interest in specific issues and their relevance for member countries. This includes groups such as the Six Party Talks on North East Asia and the ‘Shepherd’s group’ on Disaster Management in ARF, both of which do not have India as a member. Our participation in restricted format dialogues is based on our belief that in an increasingly complex and interdependent world, it is important to have regular and focused consultations with all major powers.

#### SHANGHAI COOPERATION ORGANISATION

The six SCO Member States are Russia, China, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The four Observer countries are Mongolia, Pakistan, Iran and India. The SCO chose to make India an Observer and not a member in July 2005. The then EAM represented India in 2005 at the SCO Summit and the Minister for P&NG did so in 2006 and 2007. At the SCO Summits, Heads of delegations from Observer countries are *not* included in the closed-door sessions, which are attended by Member countries to finalise Summit documents. At the three summits (Astana – July 2005, Shanghai – June 2006 and Bishkek – August 2007), India has been consistently represented by a Cabinet Minister.

#### AFGHANISTAN

India is involved substantially in the reconstruction of Afghanistan and is committed to a peaceful, stable, democratic future for Afghanistan.

India has a consistent policy towards the Taliban. The defeat of the Taliban in 2001 was, in fact, due to efforts of the Northern Alliance, whose cause we had supported against

the Taliban. It is also a fact that the defeat of the Taliban in 2001 and the establishment and continuation of a new administration in Afghanistan thereafter would not have been possible without the UN mandated US and NATO forces.

India has been at the forefront of resisting calls which propose accommodation of Taliban in the power structure of Kabul. It must be noted in this context that our interest will not be served by a precipitate withdrawal of foreign troops. Any weakening of the international commitment to Afghanistan at this juncture carries the grave risk of a reversion to a Talibanised Afghanistan, which would certainly not be in our interest. India is, therefore, engaged, along with the international community, in reconstruction efforts in Afghanistan. It would be wrong, however, to interpret this as harmonizing our policy with the US regional policy in Afghanistan.

DEFENCE FRAMEWORK AGREEMENT AND  
“MULTINATIONAL OPERATIONS”

As noted in an earlier response, the 2005 Defence Cooperation Agreement with the USA is not the first such Agreement. The framework is substantially similar to other such agreements signed with different countries.

As a sovereign State with an independent foreign policy, our engagement with other countries is determined by our own calculation of national interest and the request of the receiving State, and is not contingent upon UN auspices. The India – US Defence Framework Agreement clearly states that the Indian and US defence establishments shall “collaborate in multinational operations *when its is in their common interest.*” It is India, therefore, that will decide the time and manner of cooperation. Such cooperation will only be when it is in common interest.

For example, in humanitarian relief operations or operations related to disaster management, India has participated in multinational operations such as in the aftermath of the Tsunami in 2005.

#### MISSILE DEFENCE

The subject of Missile Defence has been part of our overall dialogue with the US, just as it is part of the US's dialogue with other major players, including Russia. During this dialogue, both sides have had the opportunity to convey their respective perspectives on missile defence. Dialogue neither implies involvement nor participation.

#### MARITIME SECURITY COOPERATION

India is engaging with other countries of the region in a cooperative framework to ensure security of sea lanes. Besides the US, our naval forces cooperate with a number of countries of the South East Asian region, including Singapore, Indonesia and Thailand. We have stated clearly that the littoral states of the region have the primary responsibility for the security of the Malacca Straits and that we are ready to work with them.

#### LOGISTICS SUPPORT AGREEMENT

The LSA provides for two specific areas of mutual interest: (i) joint exercises and (ii) disaster relief. This does not envisage providing military facilities to US forces. Neither does it provide for unqualified Indian support to the US in any armed conflict to which India is not a party. Items not eligible for transfer under this Agreement include weapon systems, lethal military equipment and those items which are barred for transfer under the national laws of the two countries. The proposed LSA does not carry any commitment to assist each other during periods of armed conflict.

#### JOINT MILITARY EXERCISES

Our forces conduct exercises with a number of countries and these are not unique to the US. The Indian Navy conducts regular annual exercises with Singapore, Thailand and Indonesia, as well as with other countries.

#### ARMS PURCHASE FROM THE US

Our defence procurements are currently from various countries, including Russia, France, Germany, UK and South Africa. The aim of the Government remains to ensure the procurement of the best technology and systems globally for the defence forces and there is no question of our getting dependent on a single country.

#### INDEPENDENT FOREIGN POLICY

The UPA government has continued to follow and build upon the basic tenets of India's independent foreign policy – a foreign policy of peace, non-alignment and autonomous choice based on national self interest and the expansion of India's strategic autonomy and capability.

In an international situation marked by simultaneous competition and cooperation among the major powers, and of unprecedented interdependence created by globalisation, representing both a threat and an opportunity for developing countries, the government has steadily improved India's relations with all major powers.

In its interaction with the other major powers and the EU, India believes that multilateral and multipolar solutions are the need of the hour for the world's major issues. Today's challenges – terrorism, proliferation of weapons of mass destruction, climate change, energy security and food security – cut across borders and demand broad-based multilateral cooperation between nations and groups of nations.

As the world moves into a more complicated environment of interdependence and competition, multilateral solutions to international problems become even more necessary. The UPA Government has strengthened India's contribution and role in international organizations such as the UN and added meaningful content to other multilateral groupings in which India participates, such as IBSA, India-China-Russia Trilateral Forum and other such fora.

# **On the IAEA Safeguards Agreement**





## Left Parties

# Issues in the IAEA Agreement

April 9, 2008

### THE CONTEXT OF THE IAEA AGREEMENT

There is a difference between the context of the current negotiations and previous negotiations that India has conducted with the IAEA. Whereas on earlier occasions, the IAEA was brought in to oversee safeguards that were associated with nuclear agreements that preceded them, the current negotiations are a *pre-condition* to the conclusion of a nuclear cooperation agreement with the United States. This has been made clear through the entire course of Indo-US negotiations and reinforced by the terms of Indo-US cooperation as set out by the Hyde Act.

The content therefore of the IAEA agreement must be understood in the light of the Hyde Act primarily and the 123 Agreement.

The Hyde Act specifically states:

“(b) DETERMINATION BY THE PRESIDENT.—The determination referred to in subsection (a) is a determination by the President that the following actions have occurred:

(1) India has provided the United States and the IAEA with a credible plan to separate civil and military nuclear facilities, materials, and programs, and has filed a declaration regarding its civil facilities and materials with the IAEA.

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(2) India and the IAEA have concluded all legal steps

required prior to signature by the parties of an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials, and programs as declared in the plan described in paragraph (1), including materials used in or produced through the use of India's civil nuclear facilities. (3) India and the IAEA are making substantial progress toward concluding an Additional Protocol consistent with IAEA principles, practices, and policies that would apply to India's civil nuclear programme.”

It appears therefore that GOV/1621 is crucial to implementing safeguards. No reference is made to INFCIRC/66/Rev2 in the Hyde Act, which as per UPA's briefing in the last meeting is the template for the agreement with the IAEA whereas GOV/1621 finds explicit mention.

The IAEA safeguards agreement is in effect a treaty, and obligations of such an agreement would be binding on India. In case a dispute arises between India and the IAEA regarding the interpretation and application of the safeguards agreement, there is no court or established judicial tribunal which has the competence to resolve such disputes. The IAEA is not subject to the jurisdiction of national courts, nor is it eligible to be a party to an action before the International Court of Justice (ICJ), according to the ICJ Statute. For this reason, all safeguards agreements contain a provision for submitting the disputes to binding arbitration.

If a dispute regarding an alleged violation of the safeguards agreement by India cannot be satisfactorily settled with the IAEA Secretariat, the Director General of the IAEA is required to report to the IAEA Board of Governors that India is in non-compliance with its safeguards agreement. Any actions which the Board then decides as essential and urgent to correct the situation are to be implemented by India

without delay. If India does not act on this directive, the Board will have to report India's non-compliance to all members of the IAEA, as well as to the UN General Assembly and the Security Council. This could then trigger collective international condemnation and even binding punitive actions against India, such as the imposition of sanctions and embargos by the Security Council, if they so decide.

Therefore, the specific provisions in the India-IAEA safeguards agreement for dispute resolution have to be examined carefully to ensure that India's long terms interests and legitimate rights as a sovereign nation are protected.

#### FUEL SUPPLY ASSURANCES AND CORRECTIVE MEASURES

The UPA briefing acknowledges that the agreement with the IAEA does not deal with fuel supply and only facilitates foreign fuel supplies. The briefing also indicated that the Safeguards Agreement contains a clause declaring that India and the IAEA have agreed to the safeguards provision taking into account the fuel supply assurances and the right of India to take corrective action in case of disruption of such applies.

While it appears that India's commitments regarding safeguards are binding and will continue as per GOV/1621, it is not clear that the IAEA has any binding obligations. It is not clear whether the clauses regarding fuel supply assurances and fuel reserves by the IAEA are in the *preambular* section or binding on the IAEA in any way. Is there a firm IAEA commitment to this effect included in the binding clauses of the agreement for ensuring facilitation of life-time fuel supply?

The UPA's briefing talked about a legal right that India can exercise to report a breach or material violation using IAEA document Article 52(c). It is not clear what these breaches or material violations are nor what is entailed in India's exercise of this right. The briefing also mentioned India's right to make a case for withdrawal of its indigenous reactors from safeguards, but again did not make clear the basis of such a case nor what happens after such a case is

made. *The right to make a case is quite different from right to take a course of action.*

From the above, it appears that right to withdraw from safeguards would exist at best only for indigenous reactors. Even if these fuel supply assurance fail, as they did in Tarapur, India would have no recourse to withdrawal of facilities built with international collaboration from safeguards, for which safeguards will apply in perpetuity.

For the indigenous reactors, the UPA briefing made clear that the termination of safeguards will be implemented taking into account the provisions of GOV/1621. Thus the crucial issue now is the implications of how INFCIRC/66/Rev2 is to be implemented *together with* IAEA Board of Governors document GOV/1621 of 1973.

In our understanding, the primary purpose of GOV/1621 is to deal with the duration and scope of the safeguards on all nuclear materials from safeguarded nuclear installations. In effect, the above could mean that all foreign supplies imported by India for civilian reactors till the date of withdrawal would have to remain under perpetual safeguards thereafter. Thus, any unused imported fuel or spent-fuel containing plutonium in these reactors, and all foreign equipments and components in them will remain under IAEA safeguards surveillance in perpetuity. Therefore, it is difficult to accept the UPA's position that the corrective measures mean that India can walk out of safeguards if the fuel supply arrangement fails or that the corrective measures in the IAEA agreement will lead to uninterrupted operations of all civilian reactors.

It might be noted that all previous safeguard agreements are now also to be subsumed under this new Safeguards Agreement. This means that while the earlier agreements carried no reference to GOV/1621, it will now be applicable to such agreements also. Thus, a more restrictive regime will be imposed on plants such as Kudankulam or RAPP 1 & 2 or Tarapur 1 & 2, compared to the Safeguards Agreement that India had signed for term earlier.

April 9, 2008

The Prime Minister had stated in Parliament that India will have the same rights as any other nuclear weapon states. It might be noted that any nuclear weapon state can unilaterally and without any preconditions withdraw its facilities from safeguards. From the briefing, it appears that once India puts its civilian facilities including its indigenous reactors under safeguards, the withdrawal of such facilities are hedged in with various conditions.

GOV/1621 appears to be a restricted document. To understand the implications of GOV/1621, the explicit text of GOV/1621 therefore needs to be made available. The UPA Note does not provide sufficient basis to determine the exact import of the Safeguards Agreement with the IAEA in respect of the concerns that have been raised earlier. So detailed clarifications to the above and GOV/1621 would be required before we can arrive at an understanding of the IAEA text.

#### ADDITIONAL AND SUBSIDIARY PROTOCOLS

Government may clarify whether the draft safeguards agreement stipulates that the safeguarded Indian nuclear facilities shall be subjected to the IAEA Additional Protocol. Through this safeguards agreement, has the Government committed India to adhere to either the Model Additional Protocol applicable to non-nuclear weapon States or to an India-specific Additional Protocol to be developed in the future? If the safeguards agreement is silent on the question of Additional Protocol, is there a confidential “subsidiary arrangement” or “side letter” finalized between the Government and the IAEA Secretariat on the subject of Additional Protocol as applicable to India?

The legal framework of the IAEA safeguards also consists of a number of elements, including the basic IAEA documents (such as INFCIRC/66/ Rev.2, GOV/1621, etc.); the India-specific safeguards agreement between the IAEA and India, supply agreements calling for verification of non-proliferation undertakings, along with relevant protocols and “subsidiary arrangements” (which usually detail how the

## Issues in the IAEA Agreement

procedures in the agreement are to be implemented). The UPA needs to clarify whether any other text of subsidiary agreement or protocol has been agreed upon or frozen between Government of India and IAEA or IAEA Secretariat.

## **Left Parties**

# **Need for Further Clarifications Regarding India Specific Safeguards**

**May 16, 2008**

The IAEA India-Specific Safeguards Agreement has to be seen along with the 123 Agreement and the Hyde Act. The Hyde Act has made clear that India must submit its civilian nuclear programme to a regime of perpetual IAEA safeguards. The Hyde Act has also made clear that if any of its conditions are not met, the US will terminate the 123 Agreement and stop all nuclear material and fuel supplies. Further, the Hyde Act has also asked the US Government to ensure that other members of the Nuclear Suppliers Group do not give any preferential treatment to India and that the NSG terms incorporate all these elements of the Hyde Act. Therefore, the India Specific Safeguards Agreement must be seen in this context and not in isolation.

The issue with respect to IAEA Safeguards has never been whether IAEA will accept that a part of India's nuclear programme will be outside of safeguards, but what are the terms under which we are putting our civilian programme under safeguards? Therefore, the argument that we have now received a major concession in terms of the India Specific Safeguards – that of keeping a part of our nuclear programme out of the purview of IAEA Safeguards – does not hold. The key issues for the IAEA Agreement were:

## Regarding India Specific Safeguards

- In case the NSG countries renege on fuel supply assurances for imported reactors, will we have the ability to withdraw these facilities from safeguards?
- If we have to bring nuclear fuel from the non-safeguarded part of our nuclear programme for these reactors in case of fuel supply assurances not being fulfilled, will we have the ability to take it back again?
- If NSG countries renege on fuel supply assurances, can we withdraw our indigenous reactors from IAEA Safeguards?
- When the UPA claims that IAEA has incorporated the fuel supply Assurances in the Safeguards Agreement, are there any operative obligations on the IAEA?
- Finally, how will the regime of inspections, etc., play out, specifically in view of the Hyde Act provisions that require monitoring of India's programme including its non-civilian component; in other words can the regime of inspections be used to examine the history of the nuclear programme and its technology development?

It is clear from what the UPA has stated that for imported reactors, in case of a dispute or fuel supply commitments being breached by countries supplying us with reactors or nuclear fuel, India will not have the option to withdraw them from safeguards – the safeguards regime will apply to them in perpetuity. Therefore, we cannot temporarily tide over a shortage of fuel by bringing it from the non-safeguarded part of the programme.

The Prime Minister had stated in Parliament that India will have the same rights as any other nuclear weapon state. It might be noted that any nuclear weapon state can unilaterally and without any preconditions withdraw its facilities from safeguards. Obviously, in India's case this right will not exist for imported reactors.

Regarding withdrawing of indigenous reactors from safeguards, the issues we had raised are not properly addressed in the UPA clarifications:



- Under what conditions can India exercise the legal right to report a breach or material violation using IAEA document Article 52(c)? What are these breaches or material violations?
- What is entailed in India's exercise of this right?
- Under what conditions can India exercise the right to withdraw its indigenous reactors from safeguards?
- What are the conditions that India will have to fulfil if it wants to withdraw its indigenous reactors from safeguards?

GOV/1621, as the UPA has clarified, pertains to the duration and termination of the safeguards. This means that if India wants to withdraw its indigenous reactors from safeguards, the clauses of this document will apply. As we are not aware of what these clauses entail, we cannot therefore comment on whether the right of withdrawing indigenous reactors from safeguards is a real one or only cosmetic.

The argument that we have accepted GOV/1621 in the past regarding other safeguarded reactors is not relevant in this context, as all such reactors were imported ones. As the UPA has now clarified, in any case the right to withdraw such reactors from IAEA Safeguards is not there in the Agreement. The issue is not whether India will be in breach of the IAEA Safeguards Agreement, but if other countries breach their agreement with India, what protection does India have? Can it then withdraw its indigenous reactors from safeguards and will the provisions of GOV/1621 stand in its way? Therefore, clarifications regarding what conditions will need to be fulfilled before India can withdraw its indigenous reactors from safeguards are still required.

Regarding fuel supply assurances, it is clear from UPA clarifications that the fuel supply clause in the Agreement has no operative value and has been put there for largely cosmetic purposes.

## Regarding India Specific Safeguards

The UPA has clarified that India had put its reactors and fuel supplies under IAEA safeguards on earlier occasions. With respect to past IAEA safeguards for reactors and fuel, there is a distinction. The imported reactors were put under INFCIRC/66/Rev2 with GOV/1621, while the fuel supplies to indigenous reactors were dealt with differently. However, now all the reactors – both imported and indigenous – offered as civilian under the Separation Plan, will be under INFCIRC/66/Rev2 with GOV/1621. The conditions therefore are not identical with respect to the past safeguards for supplying fuel to indigenous reactors. Therefore, the need to know what GOV/1621 entails in case of withdrawing indigenous nuclear reactors from IAEA safeguards.

# **Left Stand For UPA-Left Committee Meeting on June 25, 2008**

Regarding the request for going to the IAEA Board of Governors for seeking approval of the Safeguards Agreement:

1. The sixth meeting of the UPA-Left Committee on the Indo-US civil nuclear cooperation held on November 16, 2007 had decided as follows:

The Committee has discussed the implications of the Hyde Act on the 123 Agreement, on foreign policy and security matters. After further discussion, it was decided that impact of the provisions of the Hyde Act and the 123 Agreement on the IAEA Safeguards Agreement should also be examined. This will require talks with the IAEA Secretariat for working out the text of the India-specific Safeguards Agreement. The Government will proceed with the talks and the outcome will be presented to the Committee for its consideration before it finalises its findings.

The findings of the Committee will be taken into account before the operationalisation of the India-US Civil Nuclear Cooperation Agreement.”

Since the Committee is still engaged in discussions on the Safeguards Agreement and since the representatives of the Left Parties on the Committee are not able yet to come to any definite opinion in the absence of the text, and since the Committee has not yet arrived at its findings, the Government

should not go for seeking the approval of the Board of Governors. The Left Parties expect the UPA to adhere to the understanding arrived at on November 16, 2007.

2. The reason for going to the Board of Governors at this stage is to ensure that the next step for operationalisation of the deal i.e. going to the Nuclear Suppliers Group for a waiver can be ensured. In this context the joint statement between President Bush and Prime Minister Manmohan Singh of July 2005 obligates the United States to get its partners in the Nuclear Suppliers Group to agree to a waiver for India. The Prime Minister in his *suo moto* statement on India's separation plan to Parliament in March 7, 2006 confirmed this by stating:

Under the July 18 Joint Statement, the United States is committed to seeking agreement from its Congress to amend domestic laws and to work with friends and allies to adjust the practices of the Nuclear Suppliers Group to create the necessary conditions for India to obtain full access to the international market for nuclear fuel, including reliable, uninterrupted and continual access to fuel supplies from firms in several nations. . . . The United States Government has accepted this Separation Plan. It now intends to approach the US Congress for amending its laws and the Nuclear Suppliers Group for adapting its Guidelines to enable full civilian cooperation between India and the international community.

3. The former Chairman of the Nuclear Suppliers Group (till May 2008), Abdul S Minty, has gone on record as follows regarding the request for exemption for India: "The NSG has not formally considered this matter. It can only start the procedure once the Safeguards Agreement is complete with the IAEA. *The way it will go will be that the US would make a request formally for an exemption* and once we have the wording and see the implications of that wording for all the

June 25, 2008

members of the NSG, then they will be in a position to judge what they should do.” (Interview with Science Editor of NDTV, published in *The Hindu* of June 14, 2008.)

4. It should be underlined that the consultation process in the Nuclear Suppliers Group has already been initiated by the United States. In September 2007, the US presented a *Pre-decisional Draft* on “Submission on Civilian Nuclear Cooperation with India” to an informal meeting of the NSG. We are told that a revised Note has been submitted subsequently. The process of informal consultations will get formalized when the Board’s approval is taken. So the Board’s approval is an essential step to take the process of operationalisation of the Indo-US Nuclear deal forward.

5. So it is clear that India has a responsibility of concluding the Safeguards Agreement with the IAEA and the step of getting a waiver from the Nuclear Suppliers Group has to be undertaken by the United States.

6. Given the fact that the Board approval is required for going ahead with the India-US nuclear deal, the Left Parties cannot agree to this proposal.

7. The Left Parties suggest that the Committee complete its deliberations quickly and arrive at its findings before any further step is taken.

The notes exchanged in the UPA-Left Committee on India-US Civil Nuclear Cooperation are being made public since the issues involved are of vital importance and will have long-term implications for the country. The struggle waged by all the patriotic and democratic forces against the deal finds reflection in the documents submitted by the Left Parties. They are an effective critique of the deal and its harmful consequences for India's national interests, foreign policy and strategic autonomy.

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