The year 2008 saw a paradigm shift in US foreign policy. The US signed the “123” civilian nuclear agreement (referred to as the nuclear deal or simply the deal) with India, a country that is not a nuclear nonproliferation treaty signatory, has nuclear weapons, and until recently was a nuclear pariah. It is extremely surprising that even many scholars of US foreign policy, let alone the public, have given little attention to this rather historic paradigm shift in US policy on civilian nuclear trade. The US government, on the other hand, has passed the new Hyde act, which facilitates the implementation of the civilian nuclear agreement by exempting India from certain requirements of the atomic energy act of 1954.¹

The deal was signed between Indian and the US government on 1 October 2008 and cleared by the Nuclear Suppliers Group. It gives India access to civilian nuclear technology and is supposed to help the country

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fulfil its energy requirements. At the same time, India has placed 14 of its 22 nuclear reactors under International Atomic Energy Agency (IAEA) safeguards and has agreed to separate its civilian and military reactors, which it has not done before. In return, the US companies hope to get a few of the pending multibillion-dollar reactor-building contracts. The deal was signed with India even though it is not a signatory to either the nonproliferation or the comprehensive test ban treaties. The nuclear deal does not require India to give up its nuclear weapons program, but future nuclear testing by India would, as per US law, lead to the US stopping nuclear commerce with India. Republican Senator Richard Lugar stated that this deal was a good incentive for India to refrain from nuclear testing in the future. However, there seems to be some room for contention on this issue. The Indian government has asserted that the nuclear deal theoretically does not constrain it from future testing. Furthermore, according to a Council on Foreign Relations publication, “the US Senate rejected an amendment that would require US nuclear supplies to be cut off if India tests nuclear weapons. The deal does not explicitly impose that condition, though it is part of a 2006 law known as the Hyde Act, which gave the deal preliminary approval.”

While it is yet to be seen how the deal is implemented under President Barack Obama’s leadership, the analysis presented here is based on the agreement as it exists on paper. The main goal of the article is to address some of the major critiques of the deal, namely that, first, the nuclear deal undermines the nonproliferation treaty and weakens nonproliferation efforts; second, that the deal sets a precedent for other countries like Iran, North Korea, and Pakistan; third, that it allows India to have the biggest nuclear arsenal possible as it frees up its domestic resources of uranium; fourth, that it does not ensure energy security for India and takes away its strategic sovereignty; and fifth, that it will lead to a nuclear arms race in south Asia. The article will review the benefits of the deal and examine who really benefits from it.

The main arguments here are that the deal has been the result of the realization that India will never sign the nonproliferation treaty and that

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sanctions that were imposed on India have not yielded any results; it will lead to a greater transparency in India’s nuclear sector, which reduces the risks of proliferation, nuclear accidents, and nuclear meltdowns; it is a part of America’s anti-China strategy; it provides India with the opportunity to reduce its energy deficit and does not compromise India’s strategic sovereignty; and, finally, it will not significantly escalate tensions between India and Pakistan. There will be recurring tensions between India and Pakistan irrespective of the nuclear deal; intractable issues such as terrorism and the Kashmir dispute will continue to be the major causes of tension between these two countries.

The article concludes by stating that the deal is beneficial for both the US and India. The US was motivated by realpolitik to offer this deal to India and its effects have yet to be seen. For India, it ends decades of nuclear isolation and provides it with the opportunity to reduce its energy deficit and improve its relations with the US.

THE LITERATURE
Most of the literature that exists on this subject looks at the deal through three angles. The first is from the viewpoint of nuclear nonproliferation. These writers and scholars are mostly against the deal because they believe that it clearly undermines the global nonproliferation and disarmament efforts. As Robert Einhorn, advisor to Secretary of State Hilary Clinton, asks, “how can the US seek exceptions to the rules for India without opening the door to exceptions in less worthy cases—indeed, without weakening the overall fabric of rules the US worked so hard to create?”

Similarly, Daryl Kimball at the Arms Control Association argues that the nuclear deal will free up India’s existing scarce uranium resources, which could be used to create the largest possible nuclear weapons arsenal, and that “India’s civil-military separation plan would allow the free flow of personnel and information between safeguarded and unsafeguarded facilities.” Kimball believes the nuclear deal to be a nonproliferation disaster.

The second set of authors focus on the implications of the deal for India’s strategic and political sovereignty and believe that it has not only severely

compromised the country’s sovereignty and foreign policy, but does not offer it a cheap energy alternative. For instance, Bharat Karnad, a researcher at the Center for Policy Research in India, believes that it is extremely important for India to conduct nuclear tests in the future. He believes that India’s minimum deterrence requirements cannot be ascertained from the 1998 tests, that more tests are necessary, and that the nuclear deal has reduced the chances of nuclear tests in the future to a mere “theoretical possibility.”

Some authors believe that unlike natural gas and oil, nuclear energy is not cost-beneficial for India. Political leaders like Yashwant Sinha believe that the deal makes India subservient to the US, as it will have to follow the rules of the Hyde act, a domestic US law, and that this situation is humiliating for India.

The third set of authors, including this one, believe that the deal is a welcome change in Indo-US relations and is beneficial to both countries. The deal ends the era of India’s nuclear isolation and provides it with a new energy source; it is also an investment opportunity for the US, given the size of the Indian market. These authors consider the nuclear deal to be the centrepiece of a broader Indo-US partnership and focus more on the economic prosperity that would come about from closer ties between India and the US. Ashley Tellis states that while the twin-policy goals of the US—hedging against China and nonproliferation—may seem incompatible, there is a need for the US to treat different countries differently, based on the behaviour of each one. Simply put, some authors believe that if the international community cannot differentiate between countries like India and North Korea or Iran, there is something fundamentally wrong with the international system.

With regard to possible US benefits from a nuclear deal with India, Jeffrey T. Bergner, assistant secretary of legislative affairs, answered a question posed by the house committee on foreign affairs as follows:

10 Quoted in Varadharajan, “The truth behind the Indo-US nuclear deal.”
Of the 15 or so reactors India plans to import, even if the US vendors can win two reactors, it could add 3000-5000 direct jobs and 10,000-15,000 indirect jobs in America for Americans. Furthermore, at least 15 US companies, including General Electric and Westinghouse, will be involved in the process. Nuclear cooperation between India and the US is expected to lead to scientific cooperation that would help make nuclear energy safer, less expensive, proliferation resistant and efficient. Indian involvement in the International Thermonuclear Experimental Reactor and Generation-IV Forum would prove to be beneficial as it would expand the possibility of future innovations in nuclear energy. All this is only possible if the civilian nuclear deal goes through.\(^\text{11}\)

All the existing literature on this subject broadly falls under these three categories. We now turn to the major critiques of the nuclear deal.

THE NUCLEAR DEAL AND NONPROLIFERATION AND DISARMAMENT EFFORTS

The Henry J. Hyde US-India peaceful atomic energy cooperation act of 2006 was passed primarily to insulate India from American laws such as the atomic energy act and the nuclear nonproliferation act, which prohibit the US from exporting nuclear technology to a country that detonated a nuclear bomb after 1978.\(^\text{12}\)

Why did the US decide to depart from the rules and norms that it had set up? India's commitment to democracy certainly helped the US sell the deal to the Nuclear Suppliers Group and to congress. As Einhorn states, there is no doubt that this case could set a precedent for other less worthy countries and could allow India to pursue the biggest nuclear weapons arsenal possible. However, supporters of the deal have argued that it is the difference in behaviour with respect to nonproliferation and the democratic culture in India that makes it stand out and therefore it cannot be grouped with countries like Iran, North Korea, and Pakistan.

It is argued that the US has made a departure from the nonproliferation norms it helped set up in the past, but it is important to see the deal in the

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right perspective. After India conducted nuclear tests in 1998, the US had two options. One was to try to force India, through sanctions, to either cap or scrap its nuclear weapons program. The second option was to harness India’s growing power for its own geopolitical and economic interests in the region. Once a country has acquired the resources, knowledge, and technology to build nuclear weapons, it is extremely difficult for anyone to stop it from building them. Hence the US chose the latter option. While India did not have a close relationship with the US, trade flows between India and the US have been steadily increasing over the years. As per the US Census Bureau, in comparison to 1998 (the year of the nuclear tests), India’s exports to the US increased by almost 900 million dollars in 1999. Indian exports to the US grew steadily over the last decade. US imports from India increased from US$8237 million in 1998 to $21,832 million in 2006. US exports to India also grew from $3564 million in 1998 to $10,056 million in 2006.

Some segments of the US polity have had an interest in hedging against China. Forcing India to cap or scrap its nuclear weapons program would only lead to further strengthening China in the region. The decision to offer the civilian nuclear deal was a rational choice made by the US government because no sanctions or nonproliferation rhetoric would have been able to force India to give up its nuclear weapons program or sign the nonproliferation treaty. Thus, the question that seems to have occupied State Department officials is whether they wanted to isolate India, which would not have led to a termination of the nuclear weapons program in India and would have potentially created more security risks, or whether they wanted to engage India and, with India as an ally, alter the geopolitics of Asia to their advantage. The US has chosen the second option in offering the nuclear deal to India. That being said, the Indian government has always maintained that it does not intend to pursue a hostile policy towards China and has refused to be an American proxy or bulwark under any circumstances. But from a geopolitical point of view, if a US policy strategically restrains or weakens China in the region, it is unlikely that India would mind, even though it does not want to be directly and visibly involved in any anti-China strategy.

13 Varadarajan, “The truth behind the Indo-US nuclear deal.”
Additionally, by bringing India out of nuclear isolation and binding it by rules and IAEA regulations, nonproliferation efforts have been strengthened. Many authors, including this one, believe that given the fact that India is emerging as a global power, it is necessary to accept it as a nuclear power for the development of a healthy international order in the 21st century.\(^\text{16}\) The nuclear deal has led to India adopting IAEA safeguards for 14 of its 22 nuclear reactors, which has never happened before. The other eight reactors are strategic, which implies that only they will now be used to produce fissile material for weapons. Therefore, practically speaking, the deal has increased nuclear safety in India through increased IAEA safeguards and strengthened nonproliferation efforts, even if that means amending longstanding US laws.

**A PRECEDENT FOR OTHER COUNTRIES?**

Some scholars opposed to the nuclear deal have argued that this deal will set a precedent for other countries. They argue that this deal will convince other countries that they can break the rules of the international community and not only get away with it, but eventually be rewarded for it. The countries referred to are Iran, North Korea, and Pakistan. While this argument has gained prominence among the opponents of the deal, the argument is simplistic and misleading.

Iran is suspected to be undertaking a nuclear weapons program in spite of being a signatory to the nonproliferation treaty. If this is true, Iran is guilty of dishonesty as it is breaking the rules of the treaty. North Korea was a signatory to the nonproliferation treaty but withdrew from it when it decided to pursue a nuclear weapons program and the US accused it of enriching uranium for a weapons program. Furthermore, the infamous Pakistani nuclear scientist A.Q. Khan has admitted that North Korea and Iran were both involved in his proliferation network.\(^\text{17}\) Therefore, even if Iran is not developing nuclear weapons, its involvement in the nuclear proliferation racket raises serious questions about its commitment to the nonproliferation treaty. Even China, which is a permanent member of the United Nations security council, a member of the Nuclear Suppliers Group, and a signatory to

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the nonproliferation treaty has had a history of proliferation. Furthermore, the nonproliferation treaty was not effective against the arms race between the Soviets and the US, which in the past proved the double standards of the western powers as they didn't want other countries to have nuclear weapons but continued to build stockpiles of nuclear weapons themselves.

India, on the other hand, has taken a consistent stance with respect to the nonproliferation treaty. It has always considered the treaty to be a discriminatory regime and has thus refused to sign it. However, India is a signatory to the chemical and biological weapons conventions. This shows India’s commitment to the ideal of disarmament. India has not been a part of any proliferation circle, unlike Iran, North Korea, and Pakistan. On the issue of nuclear disarmament, the Indian government has stated that nuclear disarmament cannot be achieved as long as some powerful countries hold on to nuclear weapons and expect other countries to give up theirs. While an exception has been made for India, the difference between the behaviour of India and that of other countries like Iran, North Korea, and Pakistan must be noted. India has been more straightforward in its dealings with the international community than Iran, North Korea, or Pakistan. The chance of the international community considering these three countries for a similar nuclear deal is bleak, given their records on nonproliferation and the nature of their polities.

The democratic framework of India and its good record on nonproliferation, in spite of being a nonsignatory to the nonproliferation treaty, has made it easier for the US to sell the nuclear deal at the Nuclear Suppliers Group and not only enables India to engage in nuclear trade with the US, but other members of the group as well.

THE DEAL AND INDIA’S NUCLEAR ARSENAL
One of the major critiques of the nuclear deal is that it will enable India to divert its domestic uranium reserves towards its nuclear weapons program. This is a concern for many in the west. It is thought that the US administration believed that enabling India to bolster its nuclear arsenal would provide a bulwark against China, and this may very well be. Boosting India’s nuclear arsenal seems to fit balance-of-power theory and is in line with realpolitik. However, the Carnegie Endowment for International Peace’s Tellis is not

completely convinced of this assertion. He argues that given that India has two nuclear neighbours, Pakistan and China, it is difficult to determine how large India’s nuclear arsenal will eventually be. Furthermore, the fact that India’s nuclear weapons program is not transparent makes any attempt at analysis difficult. Nevertheless, there are some educated comments that can be made based on available information. First of all, the Indian government has always stated that it is pursuing a policy of minimum credible deterrence. Hence, by definition, India is not seeking the largest nuclear arsenal possible. This is a goal India would have worked towards regardless of the nuclear deal. Hence, regardless of the deal, the Indian strategy was never to maximize fissile material production.

Tellis argues that India’s CIRUS and Dhruva nuclear reactors have been the principle producers of fissile material for nuclear weapons in India. He quotes figures that indicate that as of 1998, when the tests were conducted, New Delhi possessed about 280 kilograms of weapons-grade plutonium. Furthermore, in the period before the 1998 tests, India was producing 12-16 kilograms of weapons-grade plutonium per year, which was doubled after the nuclear tests for strategic reasons. The two main strategic reasons were that India needed to deploy a decent number of nuclear warheads towards both China and Pakistan, and that it had to increase the production of fissile material as insurance against any potential “global fissile cut-off regime that may have materialized after the tests” or against international pressure requiring India to stop fissile material production.

Tellis argues that the facts repudiate the views of critics of the deal who believe that India wants to build the largest nuclear weapons arsenal possible, and that the rather gradual and planned pace of increase in fissile material production indicates that the government is not trying to achieve maximum levels of production. The facts that India has generally used two out of about 22 of its reactors for fissile material production for weapons and that the rate of production has increased very gradually suggest that India has proceeded this way out of choice and not because of any limitations.

21 Ibid.
Therefore, Tellis believes that the argument that the nuclear deal will allow India to pursue the largest nuclear arsenal possible is simplistic and not well reasoned.

**THE NUCLEAR DEAL AND INDIA’S STRATEGIC SOVEREIGNTY AND ENERGY SECURITY**

These two issues have been of major concern in India. It is believed by some that the nuclear deal with the US not only compromises India’s independent foreign policy but also caps its strategic nuclear capability. A senior opposition leader, Yashwant Sinha of the Bharatiya Janata party, stated that one of the reasons that the party is opposed to the deal is that India will have to abide by a domestic law of a foreign country. This is considered by the Bharatiya Janata party to be a humiliating act. Sinha argues that “we cannot be subservient to the US.”

Bharat Karnad has stated that it is extremely important for India to conduct nuclear tests in the future as he believes that India’s minimum deterrence cannot be ascertained just from the 1998 tests. He believes that the nuclear deal has reduced the possibility of nuclear tests in the future to a “theoretical possibility.” However, in light of the fact that India has declared eight of its 22 reactors to be strategic and has the freedom to decide whether future reactors will be civilian or strategic, the argument that India’s strategic capability has been capped does not hold water.

It would have been very difficult to conduct a test even in the absence of the nuclear deal because of existing international norms and international opinion against nuclear testing. That said, the deal allows India to maintain a strategic reserve of nuclear fuel as insurance against a stoppage in nuclear fuel supply. If India really wanted to test nuclear weapons in the future, it could build a strategic reserve of fuel for 20-30 years and then test under the right circumstances. The nuclear fuel reserve would be enough to see India through the period of sanctions that would follow the tests. Therefore, to say that India’s strategic sovereignty has been compromised does not stand up to scrutiny.

It is also argued that nuclear energy will contribute only marginally to India’s energy even in the long run, because the cost of nuclear energy will be much higher than other conventional resources like oil and gas.

22 Sinha, “We can live without nuclear power.”
23 Karnad, “‘Nuclear test is a must.”
or even than renewable sources of energy like hydroelectric power and wind power. Given that the bureaucratic process is extremely inefficient in India and implementation of projects takes an extremely long time, it is possible that the inefficient bureaucratic structure may make the nuclear deal unprofitable. But India’s energy requirements are so great that India has no option but to explore every avenue possible to fulfil its energy requirements. Furthermore, the future economic costs and consequences of not fulfilling the energy requirement may be worse than the costs involved in harnessing nuclear energy. Therefore while pessimism with respect to Indian bureaucracy is understandable, one can only hope that inefficient bureaucracy and corruption will not plague the nuclear power sector given that nuclear power generation in India will be an international endeavour, making the government of India, other governments, and private companies involved more accountable.

THE DEAL AND INCREASED TENSIONS IN SOUTH ASIA
Irrespective of the deal, tensions between India and Pakistan will increase due to terrorism and the Mumbai terror attacks. The existing standoff between India and Pakistan has been due to lack of action on the part of Pakistan to apprehend the alleged mastermind of the Mumbai terror attacks, Hafiz Saeed, and not because of the nuclear deal. Furthermore, to think that tensions between India and Pakistan would not exist in the absence of the deal is wishful thinking at best. There is no doubt that Pakistan will try to increase its nuclear arsenal and conventional arms arsenal in the wake of the nuclear deal. But the question that needs to be answered is whether Pakistan’s quest for better military equipment and a bigger nuclear arsenal would cease in the absence of the nuclear deal. For many Indian strategists, this is a rhetorical question.

Given the extremely high costs of a war and the economic condition of Pakistan and its preoccupation with domestic political problems and the “war on terror,” it is highly unlikely that it will engage in a long, drawn-out arms race that would have a significant impact on the status quo. The nuclear deal has, at most, resulted in rhetoric and some posturing, which has died down very fast, given that extremism in Pakistan seems to be posing a serious threat to its own security and stability.

Even if China and Pakistan were to sign a bilateral civilian nuclear agreement of their own, the deal will have to be passed by the IAEA and the Nuclear Suppliers Group. Given Pakistan’s track record on nuclear proliferation and political instability, any such deal would be shot down at the Nuclear Suppliers Group. Furthermore, China does not have the kind of political clout that the US does to push such a deal through. If the two countries try to bypass this process without getting “exception status,” there would be international pressure to halt the Sino-Pakistan nuclear deal. The US would certainly try its best to keep Pakistan from bypassing the process followed by the US and India. Bypassing the process of getting the deal vetted by the IAEA and the Nuclear Suppliers Group would be an act of blatant nuclear proliferation.

Pakistan has enough nuclear weapons to deter any Indian attack and therefore may not feel as threatened by the nuclear deal as it is made out to be. There is no doubt that Pakistan feels betrayed and hurt because of it. Therefore, one can expect to see some rhetoric and posturing, but that is unlikely to lead to anything very serious. India-Pakistan relations would not be free from tensions in the absence of the nuclear deal. Therefore, signing the nuclear deal was in India’s national interest and the right thing to do.

WHO REALLY GAINS FROM THE NUCLEAR DEAL?
The nuclear deal has become the centrepiece of the new Indo-US partnership, which also focuses on other issues like economic prosperity, closer military and strategic ties, intelligence sharing, and cooperation on fighting terrorism.\(^{26}\) If the nuclear deal is implemented as described on paper, it will benefit India, the US, and the countries of the Nuclear Suppliers Group that engage in nuclear trade with India. However, the US and India will make strategic gains in addition to economic ones. In theory, the deal is not just between India and the US but is between India and all Nuclear Suppliers Group countries. After the deal was cleared by the US congress, India signed a nuclear cooperation deal with France, Russia, and Canada. It is even free to engage in nuclear cooperation with countries like China. China has also hinted that it would be willing cooperate with India. Suppliers Group countries would gain from the deal and, as Bergner affirmed in his house committee testimony, quoted above, the US stands to gain on multiple fronts. It has been guaranteed a certain stake in nuclear reactor contracts. And, with

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\(^{26}\) Inderfurth and Riedel, “Breaking new ground.”
a formal agreement, the US has been able to achieve partial transparency of India’s nuclear establishment. In contrast to the Khan case, this certainly reduces the risk of nuclear accidents and nuclear.

India gains from this nuclear deal as well. In the absence of such a deal, India with its scarce uranium reserves would not have been able to sustain its nuclear power plants in the future. This deal allows India to consider nuclear energy as a viable option as it can now import both reactors and reactor fuel. Fearing inconsistency in nuclear fuel supply, the US and India have agreed to the maintenance of a nuclear fuel reserve that will protect India against the prospect of a stoppage or inconsistency in fuel supply.27

While nuclear energy may prove to be expensive in the beginning, an increase in the number of reactors is expected to reduce the per unit price of electricity produced from the nuclear reactors. Furthermore, prior to the deal, India had been under the sanctions of about 45 countries for about three decades. Any kind of nuclear cooperation was impossible and many of India’s nuclear scientists were not allowed to travel to various countries in Europe. This deal ends three decades of nuclear isolation for India.28 It recognizes India as a nuclear power state and gives it a place in the elite nuclear weapons country group. The very fact that the deal does not call for capping or scraping India’s nuclear weapons program is testimony to the fact that the US has accepted the fact that India will continue to have nuclear weapons and the US will have to accept that reality, move on, and engage India.

CONCLUSION
The signing of the Indo-US civilian nuclear deal has been a paradigm shift in US foreign policy. The advantages of the deal outweigh the disadvantages. The deal provides the means by which both India and the US will be able to pursue their political and economic interests. The US plans to create jobs through the export of nuclear reactors from the US to India. India has now been recognized as a nuclear power and can pursue nuclear energy to make up for its energy deficit. The deal has put an end to three decades of international isolation and has made civilian nuclear trade possible with

27 “US-India civil nuclear cooperation initiative.”
other Nuclear Suppliers Group member countries as well. The deal in a sense has also been emblematic of the vision of Indo-US relations in the 21st century. Closer relations between the two countries have led to cooperation in many other fields such as agriculture, economic development, business, intelligence sharing, and joint military exercises.

At the strategic level speculation may persist over a couple of issues. First of all, there are different interpretations of the nuclear deal with respect to the ability of India to test in the future. According to a Council on Foreign Relations article, “the US Senate rejected an amendment that would require US nuclear supplies to be cut off if India tests nuclear weapons. The deal does not explicitly impose that condition, though it is part of a 2006 law known as the Hyde Act, which gave the deal preliminary approval.”29 This leaves room for either party to modify its stance with respect to nuclear testing in the future and can be a source of some conflict. Secondly, the US is hedging against China through the nuclear deal. India has never wanted to pursue such a policy with respect to China and will not agree to be a part of any alliance against it. But while India may not openly pursue an anti-China policy, any US initiative to hedge against China would certainly not be met with opposition from India.

In sum, the civilian nuclear agreement marks a new era in Indo-US relations, and although it has yet to be implemented, both countries stand to benefit from it.

29 Bajoria and Pan, “The US-India nuclear deal.”