This is Shourie's 3-part article from August 2007 – a year after the original articles appeared in the Indian Express.

Part I - A word dropped, a word inserted and the assurances are fulfilled!

Arun Shourie

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123 Agreement: Mind the gap between the PM's assurances and the text of the deal

I had taken up with President Bush our concerns regarding provisions in the two bills,' the prime minister's website records Dr Manmohan Singh telling the nuclear scientists. 'It is clear that if the final product is in its current form, India will have grave difficulties in accepting the bills. US has been left in no doubt as to our position.'

That was in August 2006, soon after his speech in the Rajya Sabha in which the prime minister had drawn the lakshman rekha below which India would not go in its negotiations on the nuclear deal.

When the US House of Representatives had passed its bill, and when the fact could no longer be denied that its provisions would jeopardise our strategic interests, we were all told, 'But this is just the House Bill. Our concerns will be taken care of in the Senate bill.' When the Senate passed its bill, and the fact could no longer be denied that its provisions made even deeper inroads into our strategic interests than the House version, we were all told, 'But we have to wait for the Joint Conference of the two Houses to hammer out a final version. That will take care of our concerns.' When the final version was passed, and the fact could no longer be denied that it had in it the harshest features of each version, we were all told, 'But India is not bound by laws made by any other country. We have to wait for the 123 Agreement. That will take care of our concerns.'

We now have the 123 Agreement. It explicitly states in Article 2 that 'Each Party shall implement this Agreement in accordance with its respective applicable treaties, national laws, regulations, and license requirements concerning the use of nuclear energy for peaceful purposes.'

In the case of the US, the relevant 'national laws' include the original Atomic Energy Act of 1954, the Nonproliferation Treaty Act, and the Hyde Act of December 2006.

To take just one example, the very Section of the 1954 Act under which the '123 Agreement' is entered into — Section 123 — states that, should any nuclear device be detonated for any reason whatsoever, not only shall all nuclear commerce be halted with the country, the US shall have the right to demand the return of 'any nuclear materials and equipment transferred pursuant' to the agreement for cooperation as well as any 'special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device.' 'For any reason whatsoever', the Joint Conference of the two Houses made explicit, shall also include 'for peaceful purposes' — the ground we had invoked for the 1974 test! This provision is re-emphasised in the Hyde Act. Section 106 of the latter states explicitly, '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 Act.'

As for 'applicable treaties' the US Act to operationalise the Nuclear Nonproliferation Treaty binds the US not to directly or indirectly — and we shall soon see the

significance of these two words, 'or indirectly' — assist any Non-nuclear Weapon State to acquire or manufacture nuclear weapons. That in devising its cooperation with India the US must adhere to its obligations under this Article is reiterated and emphasised in the Hyde Act. That is why Section 104 of the Hyde Act explicitly states, 'Pursuant to the obligations of the United States under Article I of the NPT, nothing in this title constitutes authority to carry out any civil nuclear cooperation between the United States and a country that is not a nuclear-weapon state party to the NPT that would in any way assist, encourage, or induce that country to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices...'

That is just one example of what that reference to 'national laws' entails. As is well known by now, the US Congress completely disregarded the assurances that our prime minister had given to Parliament and incorporated a slew of provisions that were even more stringent, even more intrusive than the provisions of the original bills which the prime minister had said India would have 'grave difficulties' in accepting.

So, what does the prime minister do now — especially in view of the fact that the 123 Agreement explicitly mandates that, in implementing it, the US shall be bound by these laws? Simple: in the long statement that he waded through on August 13, 2007, in Parliament, the prime minister just doesn't mention any national law at all, not the Hyde nor any other Act!

Omission actually is deployed more than once as the device of choice.

'All' out, 'associated' inserted

The central imperative in our discussions with the United States on Civil Nuclear Cooperation is to ensure the complete and irreversible removal of existing restrictions imposed on India through iniquitous restrictive trading regimes over the years. 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 reprocessing spent fuel, i.e. all aspects of a complete nuclear fuel cycle.' The 'complete and irreversible removal' is just as important. But for the moment I am on the 'all' — in giving this assurance to Parliament, the prime minister used the word not once but twice.

In fact, a little later in his speech, he assured Parliament a third, and a then fourth time, 'We seek the removal of restrictions on all aspects of cooperation and technology transfers pertaining to civil nuclear energy — ranging from supply of nuclear fuel, nuclear reactors, reprocessing spent fuel, i.e., all aspects of complete nuclear fuel supply. Only such cooperation would be in keeping with the July Joint Statement.'

Persons like me pointed out that the 'full cooperation' the US would enter into could not but be 'less than full'. The reason was simple: US authorities — including President Bush
— have stated time and again that as reprocessing, enrichment and heavy water have to do with producing nuclear weapons, and not with meeting energy requirements, the US shall not transfer technologies, materials or equipment related to these three vital aspects. Sponsors of the Hyde Act, that is the ones on whom India was relying to see the legislation through Congress, themselves emphasised this in their speeches on the floor and in the Joint Explanatory Statement that they submitted while forwarding the reconciled bill to the two Houses.

And throughout the negotiations for the 123 Agreement, the US Government stuck to this stand. But how to save the Indian Government's face? Through what our prime minister in his statement of August 13, 2007, calls, 'forward looking language'! Article 5(2) of the 123 Agreement, which the prime minister claims as an achievement, is the result. It provides, 'Sensitive nuclear technology, heavy water production technology, sensitive nuclear facilities, heavy water production facilities and major critical components of such facilities may be transferred

under this Agreement pursuant to an amendment to this Agreement. 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.'

Notice the two conditions: (1) 'pursuant to an amendment to this Agreement'; and (2) 'subject to the Parties' respective applicable laws, regulations and license policies.' And then too, 'may be transferred'. When the Agreement which has not even become effective will be amended, no one knows! And how it will be amended when the 'applicable laws, regulations and license policies' of the US explicitly prohibit such transfers, no one knows! But the 'forward look' zindabad!

But what about that four-times repeated assurance to Parliament? The prime minister's new statement, the one of August 13, 2007, deploys an 'out-of-the-box' solution. 'The concept of full nuclear cooperation has been clearly enshrined in this Agreement,' the PM's new statement reads. 'The Agreement stipulates that such cooperation will include nuclear reactors and aspects of the associated nuclear fuel cycle, including technology transfer on industrial or commercial scale.'

Please read that again. Did you spot the word that is suddenly missing? 'All aspects' has suddenly become 'aspects'! And 'all aspects of the fuel cycle' has become 'aspects of the associated nuclear fuel cycle' — that is, aspects associated with reactors that the US will supply: a manual describing safety procedures, for instance!

'All' dropped. 'Associated' inserted. Assurances fulfilled. And Parliament can go jump out of the box!

What the PM does not refer to

This is not the first time that we have had a 123 Agreement with the US. We had one for Tarapur also. The US signed that Agreement with us in 1963. It was to be effective for 30 years, till 1993. That Agreement provided that the US would give fuel for Tarapur as needed by India. It provided that the US would have the first right to spent fuel in excess of India's needs for peaceful nuclear energy. And even for this part, just the first right. If it did not take back the fuel, we would have the right to reprocess it. There were no conditions. In testimony to the US Congress, US officials have themselves acknowledged that the US is not to this day sure that India violated any term of the 1963 Agreement. Yet, the US terminated all fuel supplies in 1974, saying that India had violated domestic US laws. Pressed about the laws, the US maintained that India had violated the intent of US domestic laws! For decades, it has consistently refused to either take back spent fuel or let us reprocess it. All this happened, even when there was no Hyde Act — no India-specific law — to govern that Agreement.

That is why the provision in the new 123 Agreement that, in implementing it, a party — the US in this case — shall be governed by, inter alia, its national laws becomes all important. And that is why the prime minister's decision not to let any reference to this provision slip at all into his lengthy statement is so telling of this new culture — of spin; of the half-truth. Nor do we have to wait for the laws that the US may pass in the future. The three laws that are already on their statute books — the Atomic Energy Act of 1954, the Nonproliferation Act, and the Hyde Act — are sufficient to keep India on the shortest possible leash.

To gauge the difference, contrast the provision in the 123 Agreement that the US signed with China in 1985. Article 2(1) of that Agreement specifies: 'Each party shall implement this Agreement in accordance with its respective applicable treaties, national laws, regulations and license requirements concerning the use of nuclear energy for peaceful purposes' — so far, almost the same as the Indo-US text. But then comes the vital sentence which is missing from the Indo-US agreement: 'The parties recognise, with respect to the observance of this Agreement, the principle of international law that provides that a party may NOT invoke the provisions of its internal law as justification for its failure to perform a treaty.'

That provision shields China from the Tarapur-treatment. The text in the Indo-US 123 Agreement opens us to a repeat of that treatment — on an even longer list of 'grounds' than could be envisaged at the time of Tarapur, and at a time in future when, if the PM's dreams are realised, we will be even less able to resist pressures than we were in the past — for we will be dependent on imported nuclear fuel for 35,000 megawatts of electricity and not just, as in the case of Tarapur, for just 300 megawatts.

Forward-looking farce

Arun Shourie

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123 Pact: Deal binds India to Hyde Act whose main objective is to 'halt, roll back and eventually eliminate' India's nuclear capability

On March 7, 2007, while introducing the Separation Plan, the prime minister told Parliament that the US had assured India that we would have access to uninterrupted supplies of fuel throughout the lifetime of the reactors that we would place under safeguards — both from the US and from other members of the Nuclear Suppliers Group. Elaborating on this assurance — the absolutely critical assurance on the basis of which the government justified placing two-thirds of our reactors under safeguards at the very beginning — the prime minister said: "To further guard against any disruption of fuel supplies for India, the United States is prepared to take other additional steps, such as:

a) Incorporating assurances regarding fuel supply in a bilateral US-India agreement on peaceful uses of nuclear energy, which would be negotiated; b) The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement; c) 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, and; d) 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."

Prime minister or no prime minister, our Parliament or no Parliament, the US Congress completely stamped out this string of assurances:

— It scotched the PM's assurance about "strategic reserves" — reserves on which we could fall back in the event of not just normal disruption of market supplies, but sanctions

— as happened in the case of Tarapur — by specifying in Section 103(b)(10): "Any nuclear power reactor fuel reserve provided to the government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements".

• As for the PM's assurance about joining India in convening a meeting of other suppliers to restore fuel supplies in the event of a disruption, the US Congress inserted not one, but five provisions in the Hyde Act to direct the US Government to ensure that, should the US stop supplies of fuel to India — for instance, in the event of India testing a nuclear device — no other member of the Nuclear Suppliers Group (NSG) shall supply fuel to India.

To give just one string of examples, the US Congress enacted in the Hyde Act:

1 Section 102 (13): "The United States should NOT seek to facilitate or encourage the continuation of nuclear exports to India by any other party if such

exports are terminated under United States law"
2 Section 103 (4): "Strengthen the NSG guidelines and decisions concerning consultation by members regarding violations of supplier and recipient understandings by instituting the practice of a timely and coordinated response by NSG members to all such violations, including termination of nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient until such time as a consensus regarding a coordinated response has been achieved"
3 Section 103(6): "Seek to prevent the transfer to a country of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source if nuclear transfers to that country are suspended or terminated pursuant to this title, the Atomic Energy Act of 1954 (42 USC 2011 et seq.), or any other United States law".

"Not seek to facilitate or encourage...," ... "Institute the practice of a timely and coordinated response by NSG members...,"... "Seek to prevent...". What could be more emphatic? What could be clearer? But our Micawbers kept us hoping: "Something will turn up. We are not bound by a US law. The assurances will be in the 123 Agreement. That is all we will be bound by."

We now have the 123 Agreement. It shows in the clearest possible terms that the US government has not moved a millimetre from its position about granting access to no more than the fuel that is required for the "operating requirements" of the reactors. For what do we read in the 123 Agreement? Here is Article 5 (6) (B) of the Agreement. Please do read it to see how smoke is fed into our eyes by this government:

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

• "The United States is willing to incorporate assurances regarding fuel supply in the bilateral US-India agreement on peaceful uses of nuclear energy under Section 123 of the US Atomic Energy Act, which would be submitted to the US Congress."

But this is the 123 Agreement! In which future 123 Agreement will the US incorporate that assurance?

The Article continues:

"The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement."

"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"

"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."

To enable the Indian government to save face, the words have just been cut and pasted. And in his new statement to Parliament, the prime minister hails this as an achievement: "The Agreement reiterates in toto the corresponding portions of the Separation Plan," he says. Right! What was to have been assured in the 123 Agreement has been left to be assured in the 123 Agreement!

The Americans have already nailed that particular claim. The chief negotiator for the US, Nicholas Burns, was asked this very question during his interaction with the Council on Foreign Relations on 2 August, 2007. He was asked, "Some say that under the deal, if India holds a nuclear weapons test, the US would delay its own nuclear fuel supplies to India but the US would help India find other sources of fuel, which violates the spirit of the Hyde Act. What do you say to those concerns?" And he answered, "That's absolutely false. I negotiated the agreement and we preserved intact the responsibility of the President under the Atomic Energy Act of 1954 that if India or any other country conducts a nuclear test, the President — he or she at that time in the future — will have the right to ask for the return of the nuclear fuel or nuclear technologies that have been transferred by American firms. That right is preserved wholly in the agreement."

So, we remain at what the Hyde Act provides, "operating requirements", and some assistance against "market disruptions". And that too to be enshrined in some future 123 Agreement. But on the basis of such postponement, the prime minister

claims, “Hon’ble Members will agree that these provisions will ensure that there is no repeat of our unfortunate experience with Tarapur.”

A very sad affair

There is just no end to such subterfuges — and that they should have been put out by the very person with whom the country associates honesty, makes it all a very sad affair.

“This Agreement further confirms that US cooperation with India is a permanent one,” the prime minister says in his new statement. “There is no provision that states that US cooperation with India will be subject to an annual certification process.”

How many times will such dissimulations be repeated? There is no provision in the 123 Agreement because there is no need for any provision in this Agreement. The Agreement is the first step in operationalising the Hyde Act. It clearly states that US actions under it shall be governed by the national laws of the US — among these is the Hyde Act. That Act sets out a long, long list of reports that the US president must submit to Congress — every year, and in addition as soon as material information becomes available. On the basis of such information and in accordance with the reports, the president must certify to Congress that India is fully complying with provisions and goals of the Hyde Act and other US laws. If he is unable to do so, the “cooperation” must cease forthwith.

Nor is this an idle apprehension. To give just one example, the 123 Agreement between US and China was signed in 1985. It could not be operationalised for thirteen years because the American president could not submit the certifications that were required.

And that is when there was no, and is no China-specific law — as there is the Hyde Act in our case.

Singular objective

The items on which the US president must report to the Congress have nothing to do with energy. They have one object and one alone: to see that this deal is not directly or indirectly helping India thwart the central goal of the Hyde Act — namely, as the Act puts it, to “halt, roll back and eventually eliminate” India’s nuclear capability.

A score of examples can be given. One will suffice — to show how those reporting and certification requirements have indeed been built into the 123 Agreement.

The Hyde Act provides that the US president must furnish detailed reports to the US Congress on, among a host of other things, uranium that India has mined, obtained, used, has in stock, and so on. It does so as part of the measures that it specifies to ensure that the “civil nuclear cooperation” is not indirectly helping India enhance its weapons capability.

Section 104(5)(g) of the Act lays down that the US president furnish “fully and currently” — that is, he must not wait for the mandatory end-of-the-year reporting — detailed reports on:

> An estimate of a) the amount of uranium mined and milled in India during the previous year; b) the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices and; c) the rate of production in India of fissile material for nuclear explosive devices and nuclear explosive devices;
>
> An analysis as to whether imported uranium has affected the rate of production in India of nuclear explosive devices.

Not only is it the case that, irrespective of the 123 Agreement, the US president has to compulsorily satisfy Congress that the Indo-US deal is not enabling India enhance its nuclear capabilities in any way. The fact is that requirements about uranium, and so on are built into the 123 text directly. They stick out through the camouflage. Article 10.7 of the Agreement: “Upon the request of either Party, the other Party shall report or permit the IAEA to report to the requesting Party on the

status of all inventories of material subject to this Agreement."

You realise the import of that requirement when you go back to the Article on "definitions", Article 1. That Article specifies, among other things, what materials are "subject to this Agreement". These include:

"Low enriched uranium", which means uranium enriched to less than twenty per cent in the isotope 235

"Non-nuclear material", which means heavy water, or any other material suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, as may be jointly designated by the appropriate authorities of the Parties

"Nuclear material", which means source material and special fissionable material.

"Source material", which means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors of the IAEA shall from time to time determine...

Each of these is a material subject to this Agreement. In regard to each of them, India will supply a comprehensive account of inventories.

And yet, the PM makes out as if the government has ensured some sort of dilution in the requirements that the Hyde Act has specified.

But that is the minor part — an entire tale of attempted deception hangs by it, something to which I shall now turn.

Part III - 'Strategic partnership' without a strategy

Arun Shourie

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123 PACT:a It is not the way to energy security; the way to that is to develop our own hydroelectric resources, to redouble our uranium mining, to redouble our work on fast-breeder reactors, on thorium

The one point on which there seems to be an advance is in regard to reprocessing spent fuel—alas, that too comes with caveats. The US has given us consent to process this in a dedicated facility that we are to set up, and which is to be under IAEA safeguards. But the same Article that grants us this consent provides that "the Parties will agree on arrangements and procedures under which such reprocessing or other alteration in form or content will take place in this new facility".

The steps that this latter bit shall entail have been spelled out by Nicholas Burns—both during his briefing to the press on 27 July 2007, and during his interaction with the Council on Foreign Relations. During his briefing of the press on 27 July, 2007, Burns said, "Both of us—the United States and India—have granted each other consent to reprocess spent fuel"—that genuflection is nothing but a gesture to enable our Government to maintain that we have fulfilled the PM's 'principle of reciprocity'—the US has been reprocessing spent fuel without our consent for decades! "To bring this reprocessing into effect requires that India would first establish a new national facility under IAEA safeguards dedicated to reprocessing safeguarded nuclear material. 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."

In his interaction with the Council on Foreign Relations, he again pointed out that "US law states that while we can promise reprocessing consent rights, we have to negotiate a subsequent agreement. We will do that and Congress will have the right to review that agreement".

That is, we will set up a dedicated facility under IAEA safeguards. Arrangements and procedures for using it will have to be agreed upon with the US which shall be bound by its national laws, policies, licence requirements. This new agreement, when it is made, shall be submitted to the US Congress for approval. Hence, while here we have a step forward, we have to see where it lands us by the time the sequence is completed even in regard to this one step.

The rationalisation

The rationalisation for the deal that as typical as it would be consequential if only it were true was first put out in the initial stages by K. Subramaniam. He wrote, "Given India's uranium ore crunch and the need to build up our minimum credible nuclear arsenal as fast as possible, it is to India's advantage to categorise as many power reactors as possible as civilian ones to be refuelled by imported uranium and conserve our native uranium fuel for weapons-grade plutonium production."

Such rationalisations became an inconvenience for those who were lobbying for the deal in Washington: see, Senators like Senator Dorgan pointed out, Indians will use what they get from us to increase their weapons arsenal. Little was left of it after the Hyde Act was passed--the possibility was firmly scotched. And, therefore, I was doubly surprised to hear the rationalisation in a briefing from one of the highest persons: this Agreement, he emphasised more than once, gives 'greater manoeuverability' in regard to our weapons programme: we can use the imported uranium for electricity generation; this will leave our own uranium entirely free for our weapons programme.

What an—given the eminence of the person concerned, how should I put it?—innocent ruse! In fact, the Hyde Act specifically and emphatically directs US Executive to scotch this prospect.

It states explicitly that non-proliferation of nuclear weapons remains the vital objective, and that for this purpose, capping, rolling back, and eventually eliminating our nuclear weapons capability is the instrument. The idea of the exercise is to put heavy economic incentives in the country's way so that, as Section 102(6)c puts it, India will "refrain from actions that would further the development of its nuclear weapons program". The next Section begins by stating that the policy of the US is to "Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of the NPT"; in South Asia to "Achieve, at the earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China"—China, not being part of South Asia, had surely been thrown in just for cosmetic effect; to "halt the increase of nuclear weapon arsenals in South Asia and to promote their reduction and eventual elimination"; furthermore, "Pending implementation of the multilateral moratorium, or the treaty, encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities". Towards these ends, Section 104c(2)(D) requires the President to provide "(D) A description of the steps that India is taking to work with the United States for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps that the United States has taken and will take to encourage India to identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally or pursuant to a multilateral moratorium or treaty".

These requirements are reinforced in the Section by

binding the President to ensure that, in accordance with obligations of the US under the NPT, the US does nothing in cooperating with "a country that is not a nuclear-weapon State Party to the NPT that would in any way assist, encourage, or induce that country to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices".

Accordingly, the US President must provide the US Congress—(F) an analysis of whether United States civil nuclear cooperation with India is in any way assisting India's nuclear weapons program, including through—

(i) the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex;
(ii) the replication and subsequent use of any United States technology by India in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and

(iii) *the provision of nuclear fuel in such a manner as to facilitate the increased production by India of highly enriched uranium or plutonium in unsafeguarded nuclear facilities;*

(G) a detailed description of—
(i) United States efforts to promote national or regional progress by India and Pakistan in

disclosing, securing, limiting, and reducing their fissile material stockpiles, including stockpiles for military purposes, pending creation of a worldwide fissile material cut-off regime, including the institution of a Fissile Material Cut-off Treaty;

(ii) the responses of India and Pakistan to such efforts.

Where is the scope for that 'greater manoeuverability' which our educators at the highest level tried to inveigle us into believing?

Won't let American inspectors roam around

Persons like me had drawn attention to the fact that, under what was being agreed to, we would have to accept not just IAEA safeguards and inspections, but, in addition, inspections by teams of US inspectors. American Congressmen as well as officials like the Secretary of State, Condoleezza Rice, had been completely candid about this: we will ensure 'fall-back' safeguards, they declared time and again. I cited these declarations in the Rajya Sabha.

The Prime Minister was emphatic. He said, "There is no question of India signing either a Safeguards Agreement with the IAEA or an Additional Protocol of a type concluded by Non Nuclear Weapon States who have signed the NPT. We will not accept any verification measures regarding our safeguarded nuclear facilities beyond those contained in an India-Specific Safeguards Agreement with the IAEA. Therefore there is no question of allowing American inspectors to roam around our nuclear facilities."

That last bit, "Therefore there is no question of allowing American inspectors to roam around our nuclear facilities," drew loud applause from Government benches. Encouraged, the Prime Minister repeated this determination on more than one occasion.

That was in August 2006. Come December, and in Section 104 (B)(5)(A)(III), the US Congress provided:

"(iii) In the event the IAEA is unable to implement safeguards as required by an agreement for cooperation arranged pursuant to Section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), appropriate assurance that arrangements will be put in place expeditiously that are consistent with the requirements of section 123 a.(1) of such Act (42 U.S.C. 2153(a)(1)) regarding the maintenance of safeguards as set forth in the agreement regardless of whether the agreement is terminated or suspended for any reason."
Exactly the "fall-back safeguards" that they had declared they would ensure. And what does the 123 Agreement provide? Article 10(4) states, "If the IAEA decides that the application of IAEA

safeguards is no longer possible, the supplier and recipient should consult and agree on appropriate verification measures." This is to be read with Article 12(3) which states, "When execution of an agreement or contract pursuant to this Agreement between Indian and United States organisations requires exchanges of experts, the Parties shall facilitate entry of the experts to their territories and their stay therein consistent with national laws, regulations and practices. When other cooperation pursuant to this Agreement requires visits of experts, the Parties shall facilitate entry of the experts to their territory and their stay therein consistent with national laws, regulations and practices." Inspectors become 'experts'—and the assurance is fulfilled!

Even that is not the end of the matter. Article 16(3) provides, "Notwithstanding the termination or expiration of this Agreement or withdrawal of a Party from this Agreement, Articles 5.6(c), 6, 7, 8, 9, 10 and 15 shall continue in effect so long as any nuclear material, non-nuclear material, by-product material, equipment or components subject to these articles remains in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties agree that such nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards."

Thus, if even a little bit of the equipment, material, etc. are left behind, not just IAEA safeguards but in addition the right of the US to act on the fallback safeguards shall continue. It shall continue even if the 123 Agreement itself expires. It shall continue even if India withdraws from the Agreement. Read again the words with which this Article opens: "Notwithstanding the termination or expiration of this Agreement or withdrawal of a Party from this Agreement."

And yet the Prime Minister says in his new statement, "There is no change in our position that we would accept only IAEA safeguards on our civilian nuclear facilities."

And do you recall what is provided in that other 123 Agreement—between US and China? "Noting that such cooperation is between two Nuclear Weapon States", the Agreement begins, and again in Article 8(2), "The parties recognise that this cooperation in the peaceful uses of nuclear energy is between two Nuclear Weapon States and that bilateral safeguards are NOT required."

That is why the Government was so wrong in trying to scoff away our pointing to the insistence with which US spokesmen were declaring that India was NOT being recognised as a Nuclear Weapon State: its spokesmen insinuated time and again that we seemed to be stuck on a question of prestige! The fact was, and is that American insistence on this matter was directed at achieving vital practical consequences. The consequences are now upon us. And the Government is left redoubling its untruths.

Conclusion

On every other matter—testing; the effects on our strategic programme; 'India specific safeguards'—the PM has repeated the assertions he has advanced in the past. They remain as misleading. The deal is not the way to energy security—the way to that is to develop our own hydroelectric resources, to redouble our uranium mining, to redouble our work on fast-breeder reactors, on thorium.

To make this deal the fulcrum of closer Indo-American relations too is a blunder. And the reason the Government has blundered is manifest: it has got swept off—should that be 'flattered off'—its feet by talk of 'strategic partnership' without having a strategy. By the time the consequences of its details became evident, the deal had become a matter of ego and prestige. Hence, this uncharacteristic tenacity.

(Concluded)