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Editorial

The current issue of International Journal of South Asian Studies is a special volume on India Australia relations and is composed of six papers discussing some of the major developments of the past few years that are of significance to the bilateral relations. India and Australia have been allies for a very long time with a history of trade and travel between the regions much before the British rule. Being part of the British colonial empire made both the Commonwealth of Australia and the Republic of India members of the Commonwealth of Nations. As independent nations with liberal democratic systems of governance, they have continued the peaceful relation strengthened by economic, military, cultural and technological partnerships. The partnership extends to areas as traditional as agriculture, mining, services and education to as diverse as water management, sport, space science and cyber technology.

In the recent years, both countries have taken special measures to intensify regional stability to foster their strategic interests in Asia; to enhance economic ties to safeguard their trade relations; to protect their mutual interests in export of goods and services. The papers included here discuss in detail some of these aspects of India Australia relations.

Gopalji Malviya writes about the strategic landscape of Indo-Pacific region and the implications for India and Australia, in his paper, *Strategic landscape of Indo-Pacific Region: Imperatives for India-Australia Defence Cooperation*. The paper analyses the relevance and role of measures like Memorandum of Understanding on Defence Cooperation, 2006, the Framework for Defence Cooperation, 2014, the nuclear agreement and many other bilateral agreements. The interactions at the realm of defence training and technology cooperation are also deliberated on in detail.

Shifting Strategic Dynamics in the Indo-Pacific Region: Implications for Australia and India by D. Gopal and Dalbir Ahlawat discusses the causes of strategic polarization in the Indo-Pacific region and the implication on Australia and India, especially examining the US's pronouncement of 're-balancing' in the Asia-pacific region and China's assertion over the South China Sea.

The third paper in the issue, authored by Yeshi Choedon, is titled, '*India and Australia on UN Security Council Reform: A Comparative Perspective*'. The argument of the paper is that since the Cold War, India and Australia have different stand on global issues as well as on the role of the UN Security Council. Consequently, the paper tries to assess why and how India and Australia adopted divergent opinions on the issue of Security Council reform also.

K.D. Kapoor discusses about the historic Trans-Pacific Partnership and its implications on Australia and global trade. The paper is titled, '*Mega- Regional Trade Agreements and Global Trade Governance: Australia and the Trans Pacific Partnership*'. It focuses on understanding the nature and features of TPP as a pioneer in mega regional trade agreements and the impact on

global trade governance. He analyses the Australian outlook about TPP and the apprehensions related to provisions like Investor State Dispute Settlement (ISDS) mechanism. A brief overview of the impact of TPP on generic drugs, agriculture, service sector, e-commerce, manufactured goods, energy resources and investment in Australia is also attempted by the author.

The next paper is by G. Geethika, titled '*Free Trade Agreements and Access to Affordable Medicines: Is TPP a bane to Indo-Australian Relations?*' The paper picks up the discussion in the previous paper and studies the nature and scope of Free Trade Agreements (FTAs), the impact of FTAs on access to affordable medicines, peculiarities of the newly concluded Trans Pacific Partnership (TPP) Agreement signed by the US and eleven countries of the Pacific region, including Australia, and the implications of intellectual property rights contents in the TPP on easy trans border movement of affordable (generic) medicines and on Indo-Australian relations in the long run given the interest shown by the US in the region.

The paper by Mithila Bagai is on '*Newness in India- Australia Relations: As Never Before*'. The author brings forth an examination of the changing nature of India-Australia political relations in the light of the visit to Australia by Indian Prime Minister Narendra Modi. The visit is special since it's the first in 28 years, even though the Australian counterparts have regularly visited India. The paper observes the reasons for the coldness in the relation and the prospective challenges and opportunities open to both countries.

In the paper, *Strengthening India Australia Ties: Prospects for Cooperation in Southeast Asia*, Nivedita Kapoor discusses the prospects of geopolitical cooperation weighing up the assertiveness of China and the US in the Asian region. In the 'post-Pokran 2008' period, India and Australia relations have progressed significantly as 'logical strategic partners' to gauge the security risks in the region. The paper initiates a comprehensive study of traditional and non-traditional security issues like maritime security, South China sea dispute, terrorism and arms trade, transnational crimes, piracy, disaster management etc.

Mohanan B Pillai

Editor

Strategic Landscape of Indo-Pacific Region: Imperatives for India-Australia Defense Cooperation

Gopalji Malviya*

Abstract

The common security interests in the Indo-Pacific region have always kept the India Australia relations at a peculiarly level with both positive and otherwise allusions. India and Australia are growing powers in the international system; both are important regional players and have deep rooted democratic traditions, growing economy and technological race. Accelerating bilateral defense relationship could be traced since year 2000. The paper observes the volatility of the Indo-Pacific region and reviews, in detail, the security relations between India and Australia as well as comments on the implications of the scenario on India Australia relations.

Key Words: Indo-Pacific region, India-Australia Defense Cooperation, MoU

1. INTRODUCTION

India and Australia have a long history of common security interests, both within and beyond the Indo-Pacific region. This illustrates the vast potential for further enlarging and enhancing of bilateral dynamics. India is a fast emerging democratic super power in Asia. Hence, it would be appropriate that politico-strategic cooperation between India and Australia is further developed and strengthened. These two prominent Indian Oceanic States which shared democratic values could play a significant role in Indo-Pacific region towards securing peace and security cooperation. In the current phase of evolving political setting, relationship remains broadly positive with vast opportunities and continued goodwill that is likely to be complimentary to each other. India and Australia are growing powers in the international system; both are important regional players and have deep rooted democratic traditions, growing economy and technological race. Both the countries have demonstrated a commitment in a joint declaration in wide ranging security related issues in 2009. Accelerating bilateral defense relationship could be traced since year 2000. It is thus important to build strategic partnership and collision of like-minded countries.

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2. STRATEGIC LANDSCAPE OF INDO-PACIFIC REGION

The present strategic landscape in Indo-Pacific region is highly volatile. Following events have brought politico-strategic disturbances in the region: (a) nuclear belligerency demonstrated by North Korean military dictator, (b) Chinese covert support to North Korea and using it as a tool of international diplomacy, (c) China-Taiwan face off, (d) Sino-Japanese dispute over Senkaku Island, (e) Chinese over assertion of its sole rights over South China Sea, (f) Chinese claims of sovereignty over various islands territory, and (g) Chinese military and nuclear missile deployment in the region and the American military presence in the region has further created alarming situation in Indo-Pacific region (Panda 2014).

The growth of India's economic and IT sectors interwoven in its 'Look East policy' is that attracted Australia's attention and perhaps opened new windows of convergence. There was strong feelings and reactions of academia, civil society and even in the ruling establishments that Australia should review its tough stands particularly after India's nuclear test in 1998. Pressure was mounted to look towards India with more positive approach with respect to traditional and non-traditional security issues. Australia has long pursued its security interest by maintaining security partnerships with regional friends and neighbours. Building security partnerships and engaging regional states in defense and security dialogues helps to reassure states and offers a means by which potential problems can be resolved. Over the past few years, Australia has formalised and strengthened some key security relationship. For example, India and Australia have concluded Memorandum of Understanding (MoU) on Defense Cooperation in 2006 and a framework for defense cooperation in 2014. The 2014 agreement envisage regular naval visits and high level military exchange between the two countries. From strategic partnership to Nuclear agreement between India and Australia has brought the relationship to a higher level (Grare 2014).

Australia has long recognised the potential of India as a strategic partner, based on shared democratic tradition and common values and strategic interests. The current relationship between the two nations is reflected in strong economic ties. India is Australia's fourth largest export market and burgeoning engagement in the areas of education, science and technology collaboration, and cultural exchange. From a defense and security perspective, our bilateral relationship mirrors the broader patterns of the relationship. We share high level strategic interests that shape and guide our interaction and continue to develop co-operative defense activities and personnel exchanges. India and Australia share variety of strategic interest in bilateral, global and regional context with the prime interest in combating international terrorism, non-proliferation of weapons of mass destruction, securing maritime lane of communication and energy and resource security. We also share an interest in a range of transnational security challenges such as disaster, environmental degradation and international crime.

3. INDIA AUSTRALIA STRATEGIC PARTNERSHIP MEASURES

Taking forward the decision to upgrade its relations to the level of strategic partnership, India and Australia agreed to create a comprehensive framework for enhancement of Security Corporation. India and Australia have upgraded their relationship to that of 'Strategic partnership' and signaled their intention to increase cooperation on security issues. As for the defense dialogue and cooperation within the framework of the Memorandum of Understanding (MoU) on Defense Cooperation signed in March 2006, the mechanism to carry it forward includes Defense Policy, talks between Senior-level officers, staff and service to service exchanges including exercises. Indian defense market and Industry is highly competitive and restricted. However, there is a wide scope for India-Australia greater military cooperation particularly in the changing strategic landscape in the region. It is desirable, particularly in the congenial and warm political relations that exist today. This may also provide strategic transformation in bilateral relations in future.

As India is emerging a global power, economic growth and military might are two major components that are propelling India to play more prominent role at international theatre. India's large military industrial complex, innovations and technique advancements have been consistent in military requirements. India's *Navarathna (9 Public Sector Undertaking)*, over 40 ordinance factories, large network of Defense Research and Development Organisation (DRDO) and continued advancement in space technology and different missile programme makes this country as one of the top few countries in the world. India's leadership in IT industries, its services and products are already established (Smith 2010).

India and Australia demonstrated their commitment in a joint declaration on security cooperation that is likely to strengthen understanding and cooperation in wide ranging security related areas that includes counter terrorism, defense, disarmament, non-proliferation and maritime security issues. In November 2009, Indian Prime Minister Dr. Manmohan Singh and Australian Prime Minister Mr. Kevin Rudd expressed that this strategic partnership between the two countries is based on shared desire to promote regional and global security as well as their commitment to democracy, freedom, human rights and rule of law. The joint statement also affirmed their respect for each other's contribution for promoting peace, stability and development in Asia and beyond. This opened a new chapter of profound relationship. It is not very clear whether entering into a strategic partnership would facilitate change in Australian attitude and reluctance to sell uranium to India. However, the term connotes at least intent to develop deeper and broader ties between the two countries (Rahman 2009).

Growing bilateral defense relationship between India and Australia could be traced to 1996 (*New Horizon Programme*) that triggered a swing in Indo-Australian bilateral relations in terms of fresh look. Exchange of military personnel, training, service links, establishment of strong strategic dialogue and maritime engagement has been the prime agenda of this strategic discourse. Exchange of officers at Defense Services Staff College (DSSC), Wellington and National

Defense College (NDC), New Delhi have provided qualitative training and enduring personal links apart from understanding the defense architecture of their respective countries. Indian military officers also participated in Australian course such as emergency management, peace operations and defense management. In recent years India and Australia have engaged in a series of reciprocal visits to defense institutions. This practice is certainly encouraging as it provides an opening for interaction among military officers of the two countries and also helps to develop deeper understanding of each other's strategic perceptions (Grare 2014).

India's military requirements is large and ever growing, however there are critical areas of military technology that India has to scout for these may be for acquisition, procurement or collaborative production. For almost five decades India has been over dependent on former Soviet-Russia for most of its military hardware. After disintegration of Soviet Union, the Russian Federation could not keep up quality of supplies with the agreed time frame. Inordinate delays, cost escalation, obsolescence and prolonged negotiations have hampered India's military readiness. Hence there is a need for India to look around for alternatives source of military requirement.

While there is sufficient scope for a comprehensive engagement on various dimensions of security, maritime security cooperation would constitute an area of greater importance based on geo-political realities in Indian Ocean regions. Maritime concerns are potential areas for futuristic relationships. Australia may seek to increase interaction and create opportunity for bilateral maritime engagement. The converging strategic interest meets in the Eastern Indian Ocean Region. Australia as a maritime country seeks opportunities of greater interaction with Indian Navy. Indian Navy also realises the politico-strategic advantage of partnership with Australian Navy. Naval co-operations and greater interactions may lead towards system integration of ships building and submarine building technology, submarine escape and search and rescue operations, logistic and material management and networking. The Australian mine sweeping system has already secured a major order with Indian Navy. As a latest client for its innovative system that protects the ship from under water mines (Liss 2007).

The increasing desire of extreme competitive and restricted Indian defense market has now identified a new player; the Australian is also searching for new opportunities in the business of defense cooperation. First ever Australian marine defense mission has visited in India in early 2009. Delegation comprised of nine leading defense industries displayed their expertise and capabilities in maritime security and offered the same to the Indian armed services. The Australian military experts were seeking to build strong partnership and looking for joined venture with the Indian defense establishment. The delegation was here to understand the Indian system of defense procurement and acquisition and offered high-tech value added competitive solution and entire spectrum of maritime security in submarine system development, integration and high pressure hull fabrication, ship construction, modular construction, system integration, platform integration, sub-system design, maintenance services, patrol boat design and construction of high speed naval vessel design. The presentations were made before key government department including Ministry

of Defense, Coast Guard and Border Security Force (BSF). The Australian military experts offered latest technology, including specialised safety, combat and security equipment, personnel protective apparel, chemical splash protection suits, satellite communication and software for the management of search and rescue missions and Ariel maritime surveillance (Rahman 2009).

Participation of the Australian experts at the Aero India February 2009 was facilitated by the Australian Department of Defense Development of State and Regional development, New South Wales, Australia Trade Commission, International Trade and Investment Promotion Agency and the Australian High Commissioner in India. This interaction was considered as significant in defense, aviation and aerospace sectors. Australia has expertise in wide spectrum of aerospace technology with proficiency in air systems integration, aircraft component avionics, pilot education training & aero maintenance training, general aircraft manufacture and maintenance and support. Australia is also looking for Indian cooperation in civil aviation sector with most modern systems and equipment. Australia is a major aviation and aerospace centre in Asia and Pacific region capable of dealing in civil and aerospace markets in India.

In the contemporary world it is difficult to separately characterise and classify global, regional and local threats. It is thus important to build strategic partnerships and coalitions of like-minded countries for lasting peace and security in the region. Co- operative approach of capacity building in defense preparations and military readiness would constitute a step forward. Economic and trade relations, that had accelerated over past two years, however, are not reflected in strategic and defense interactions, yet they provide for essential and basic ingredients for strong security relationships. This gap exists and could be addressed by both the countries (Brewster 2010).

Following areas could be vital for futuristic shared vision by both countries:

- Maintaining and securing sea-lane communication
- Smuggling and Proliferation of small arms in the region
- Drug trafficking and Narco-terrorism
- Illegal Migration and Human Trafficking
- Maintaining and Restoring Extra Regional Power
- Maritime Terrorism
- Cooperation in search and rescue operations in ocean disaster
- Sea Piracy and other Oceanic Crimes

- Protection of Ocean Environment and issues related to climate change.
- Sharing of Intelligence and Vital Information
- Energy Cooperation
- Ocean Partnership, Ocean Management, Ocean Governance.

The other areas that are important and may draw India-Australia joint venture and cooperation are:

- Rise of China
- Emerging tension and nuclear threat in Korean sub region.
- Changing contours of Sino-Japan relation and development of new security structure.
- Development in Indonesia, its stability and ethnic upsurge in Fiji.
- Regular dialogue on Defense Cooperation with both Defense Ministers.
- Nuclear proliferation related issues and commitment to global, complete and universal disarmament, to seek a peaceful world free of Nuclear Weapons.
- Areas of military modernisation, collaboration and transfer of military technology.
- Explore the possibility initiate a formal and periodic dialogue with Royal Australian Navy and Indian Navy and also to establish a naval hot line between the two countries.

4. CONCLUSION

India, USA, Japan and Australia, all multicultural, vibrant democracies have lots in common but yet to form a viable institutionalised mechanism for better understanding of common threat, regional security, economic partnership and addressing maritime issues. These countries together could address non-military threats and could be catalyst for Asian Strategic Balance, particularly in the context of North Korea's nuclear programmes and tension growing due to politico military development in the sub region. These groups of four could also address Terrorism, Weapons of Mass Destruction and Small Arms Proliferation in Asian countries.

There is an optimism of upswing in Indo-Australian relation beyond Curry, Cricket and Commonwealth! Growing naval cooperation and nuclear cooperation agreement between the two countries provide a clear indication of moving forward and strong bondage. However, it will

be interesting to see whether Australia will support India's case for permanent seat in UN Security Council? How Australia will try to maintain diplomatic balance with India and China? Whether there will be a greater convergence with India on regional security issues and its views on South Asian peace and security?

Strategic environment in and around India continued threatened and particularly with new types of traditional and non-traditional military challenges in India's land, air and sea space. Hence, a closer military cooperation with Australia could be one preferred options that India may wish to seriously consider. The existing tri-lateral understanding between India, Japan and USA could form a formidable security structure. In case of Australia also joins the group, this would provide an effective counter balance to address micro and macro strategic irritants in South China Sea and also in the entire Indo-Pacific region.

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Shifting Strategic Dynamics in the Indo-Pacific Region: Implications for Australia and India

D. Gopal and Dalbir Ahlawat*

Abstract

The US declaration of 'pivot' and subsequent 're-balancing' in the Asia-Pacific region in 2011 and China's assertion of its hegemonic behaviour in the South China Sea has resulted in polarisation among the countries in the region. Obama administration's push to strengthen alliances and partnerships, instead of subduing China, made Beijing to firm-up its stand on the South China Sea notwithstanding the international arbitration tribunal judgment against its claims. Furthermore, Beijing initiated parallel institutions to deter the US maneuvers to checkmate a multipolar Asia and a unipolar international system. With Trump in the White House and his assertion to dilute the alliance system, encouraging nuclear weapons proliferation, improving relations with Russia and fight on terror has changed the regional security and strategic dynamics. These new subtleties give rise to different implications to regional countries like Australia and India. A major objective of this chapter is to analyse the evolving strategic dynamics in the Asia-Pacific region, underline the US and China's strategic overtures, discuss implications of the Trump administration's policy postures and insinuations for Australia and India.

Key Words: Indo-Pacific, Strategy, Security, Donald Trump, India, Australia

1. INTRODUCTION

President Donald John Trump in his foreign policy propositions has indicated that his administration will be less inclined in honouring the existing alliance system in its current format, and will tend more towards economic development of the United States to “make America great again” (Trump 2016). This overture raises a serious question mark as to how the new administration will respond to Barack Obama initiated and Hillary Clinton championed “pivot” or in softer terms “re-balancing” of Asia. The re-balancing was coined against the backdrop of the US's shift in its interest in the Middle East and quick fill of the power vacuum in Asia-Pacific by China.

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Yet, a major issue for the Trump administration will be how to respond to a rising China and its assertion both economically and militarily in the South China Sea (SCS) and the Indo-Pacific region *per se*. The Indo-Pacific region, no doubt, is passing through a flux to adjust to the evolving regional and global order, for that several permutations and combinations appear to be in the process. Major countries like India, Australia, Japan, Philippines, Indonesia, Malaysia, Vietnam and others are either openly reckoning the Chinese power and potential, or are entering in bilateral, trilateral or multilateral security and strategic agreements to maintain the status quo, balance of power, hedging or strengthening their alliance or partnership with the US.

Overall, China's ascendance, the US withdrawal or in a sense conceding to Beijing to continue its assertive power postures in the region, and the alliance countries like Japan, South Korea, Philippines and Australia's, perception of feeling jittery on being left high and dry to fend themselves or buy the US alliance with monetary contributions gives rise to a complex, uncertain and perilous situation. Placed in this critical predicament, states in the region are pushed into an imbroglio as how to respond to the evolving power shift and what options countries like India and Australia have, whether they can defy the Cold War psyche and adapt to withstand the shifting power paradigm.

2. CHINA-US STRATEGIC MANOEUVRES

China

China in its strategic overtures has unambiguously charted out its strategic imperatives. At the *Conference on Interaction and Confidence Building Measures in Asia 2014*, President Xi Jinping (2014) succinctly outlined, "it is for the people of Asia to run the affairs of Asia, solve the problems of Asia, and uphold the security of Asia". This statement undoubtedly reflected that China aims to restrict the role of external powers in the Asian security and strategic affairs. In this statement, also implicit is that Beijing considers itself as the most prominent power in Asia and intends to play an uncontested leadership role to shape an order that constitutes a unipolar Asia under the strategic and security aegis of China. This means taking the Asian affairs away from the Western patterned alliance system to one that promotes "security through dialogue" (Schreer 2016).

Against this backdrop, China's pursuit of its publicly stated strategic delineations including, i) Anti Access/Area Denial (A2/AD), ii) second island chain of defence, iii) creation of an Air Defence Identification Zone (ADIZ) over the East China Sea, and iv) its claims over the South China Sea through the nine-dash line, have posed strategic and security challenges for the regional countries as well as for the US. These challenges were evident with the release of its ninth Defence White Paper titled, "China's Military Strategy", in May 2015, which outlined a new military strategy that charted a more "active defence posture". The Paper highlighted challenges at two levels, one at regional level referred to as "some of its offshore neighbours take provocative

actions and reinforce their military presence on China's reefs and islands that they have illegally occupied" and the other of "external countries...busy meddling in South China Sea Affairs". Considering the evolving strategic challenges, China envisages winning the "local wars under informatised conditions" and the external wars by expanding "offshore waters defence" with "open seas protection". Therefore, Beijing emphasises on strengthening its determination to "strategic management of the sea"(Ministry of Defence 2015) and developing a strong anti-access/area denial strategy using short, medium and intercontinental range ballistic missiles, anti-ship ballistic missiles (ASBM), nuclear-armed submarines etc (USNI News 2015).

However, Beijing's claim of "neighbours take provocative actions... reinforce their military presence...illegally occupied" China's reefs and islands proved *volte-face* with the October 2015 decision by the Permanent Court of Arbitration award in the Republic of Philippines v. the People's Republic of China (PCA 2015). The Tribunal finally wrapped up with the understanding that China had no legal basis for claiming historic rights to resources in the areas that fall within the nine-dash line. It was judged that none of the features claimed by China can generate an Exclusive Economic Zone (EEZ) and that certain sea areas claimed by China were within the EEZ of the Philippines. It was concluded that China had violated the Philippines' EEZ and sovereign rights, since the area was not being overlapped in any Chinese entitlement. China had interfered with Philippine fishing and petroleum exploration, through the construction of artificial islands.

Instead of accepting the decision, Beijing repeatedly expressed its denouncement saying, "It will neither accept nor participate in the arbitration unilaterally initiated by the Philippines" (PCA 2015a). Furthermore, China negated the judgment by stating: "PRC solemnly declares that the award is null and void and has no binding force. China neither accepts nor recognises it"(Tiezzi 2016). Notwithstanding such behaviour, China still considers its rise as a peaceful development and supports amicable relations with the Asian countries. In the words of President Xi Jinping (2014a), "We believe that it is necessary to advocate common, comprehensive, cooperative and sustainable security in Asia. We need to innovate our security concept, establish a new regional security cooperation architecture, and jointly build a road for security of Asia that is shared by and win-win to all".

As against China's proclamation of an order steered for common Asian security and strategic interests and challenges, Beijing is being accused by the regional states as a hegemonic power that aims to suppress the regional security ambience and forcefully control the resources and territories in the region. Such as Beijing's claim over the SCS has connotation not just on the sea water but also on the estimated deposits in the range of around 12 per cent of global fisheries catch, 11 billion barrels of oil, and 190 trillion cubic foot of natural gas. While being energy rich, the \$5.3 trillion sea-borne trade passing through the area every year makes it more strategic (Lannin 2015). Thus, dredging and filling to create artificial islands in the SCS and, at the same time, sailing of its nuclear submarines in the India Ocean proves duality between the stated and

enacted objectives of peaceful rise (USCC 2014). China's response to its territorial disputes with its neighbours has not demonstrated what has been elaborated in its statements at different forums.

These actions, against the Chinese claims of regional prosperity and win-win equation, raise apprehension at the regional level as the states support status quo in the Asia-Pacific region as a prerequisite for the peaceful development and prosperity. The arbitration judgment not only supported the regional states to aspire for their legitimate claims but also exposed China as a coercive power. In a sense, "China will almost immediately abrogate its moral and ethical right to state or stake a position in future international arbitrations of all kinds" (Kainikara 2016).

United States

The United States acted as a guarantor of peace in the Asia-Pacific region from post-Second World War till its involvement in Afghanistan and Iraq wars. This involvement proved opportune for China to fill the power vacuum swiftly. Witnessing Beijing's increasing assertive power projection in the region, the US in response to these overtures in turn gave impetus to its strategy of 'rebalancing'. Hillary Clinton (2011), as the Secretary of State, emphasised in her article US' "strategic turn" to the Indo-Pacific region. This includes strategies like strengthening the existing bilateral security alliances, deepening working relationship with emerging powers including China, engaging with regional multilateral institutions, and forging a broad-based military presence. Enforcing a rebalance, the US aims to focus on rekindling the existing alliances with treaty allies such as Japan, Korea, Australia, the Philippines and Thailand, and expand and deepen partnerships with Singapore, Vietnam, India, Indonesia and others (Berteau et al 2014).

In his address to the Australian Parliament in 2011, President Barack Obama reinforced that the US is a "Pacific power here to stay" and that he had instructed his national security team. In his address to the Australian Parliament in 2011, President Barack Obama reinforced that the US is a "Pacific power here to stay" and that he had instructed his national security team to make "America's presence in the region a top priority". Furthermore, he reiterated, "Let there be no doubt, in Asia-Pacific in the 21st century, the United States of America is all in" (Lane 2011). Thus, to realise the re-balancing, the US continues to build-on and reinforce its Indo-Pacific partnerships with India, Japan, Australia, South Korea and Taiwan because it cannot defend vital national interests in Asia without them (Blackwill et al 2015). According to strategists, Hillary Clinton, as Secretary of State quite emphatically expressed her determination to "spare no effort to contain China's rise" as a result she was considered "fiercely anti-China" (Kwok 2016).

Against this backdrop, entry of President Trump in the political horizon of the US gave rise to new strategic dynamics. He has indicated to radically alter focus from the strategic calculations to pressing economic imperatives. To administer this, he indicated to reduce the US military footprint in the Asia-Pacific region. Trump pointed towards a staggering \$19 trillion debt, that he explained: "We're sitting, probably, on a bubble. And it's a bubble that if it breaks,

it's going to be very nasty. I just think we have to rebuild our country". To meet this objective, Trump underlined "unabashedly noninterventionist approach to world affairs" and questioned "the value of massive military investments in Asia". To counter China, or "to halt China's military airfields on reclaimed islands" in the South China Sea, Trump supported countering by limiting China's access to American markets (Philip 2016). Thus, rather than a military threat or deterrence, China's hegemonic overtures can be neutralised through trade tariff on goods emanating from there, Trump signaled: "Who the hell cares if there's a trade war?" (Zezima 2016). He has threatened to impose tariff as high as 45 per cent on imports from China. To begin with, Trump is projected as a repeat of President Andrew Jackson (1829 to 1837) as a "nationalist, populist, suspicious of the outside world—and willing to use force to beat it back" (Fisher 2016). Even the Chinese sources consider Trump as "'volatile' and 'unpredictable', less than desirable traits when it comes to handling great-power relations" (Kwok 2016).

Though it is difficult to extrapolate at this stage as how the Trump administration will thrust its presence in the Indo-Pacific region, however, based on the initial indicators different scenarios can be envisaged in the following section.

3. IMPLICATIONS OF TRUMP'S POLICIES POSTURES

The tribunal award and Trump's election victory took place within a gap of few months. The George Bush and Obama administrations had reflected continuation of the US's Asia-Pacific policy while flexing muscles at times, remained reticent on some of the regional issues. Even on the Arbitration Tribunal award and China's rejection of it in action and spirit, the US instead of instigating a confrontational approach, appealed the concerned parties to keep restrain, while not supporting "any one side in territorial disputes, it insisted on ensuring respect for freedom of navigation and overflight in the South China Sea". US further cautioned the parties to avoid conflict and opt for "peaceful resolution of disputes and... all parties to respect International Law, including the UNCLOS". At the same time, Washington also set the red lines for China to not to adopt "aggressive moves" and claim "enhanced air defence identification zone" and harass the ships and aircrafts passing through the SCS (Stuart 2016).

It is quite apposite to postulate that the US and China will not involve in any direct military conflict. So the question arises, how these two powers will *manoeuvre*, challenge, or accommodate each other?

The first option could be that the Trump administration will continue to project its overtures of 're-balancing' in the Indo-Pacific region simply to remain relevant and competitive. And continue to neutralise China's hegemonic actions by navigating within the 12 nautical miles of the disputed territories and support the existing alliance and partnership network; at the same time not initiating any action that could thrust China in an offensive mode, thwarting China's ambition to exert hegemonic control over Asia in a modern tributary system. As attested by retired

US Marine Corps General James Mattis, China intends to construct a “tribute model” with the intention to exert a “veto authority in each of the countries around their periphery” (Grady 2015). Thus, under this approach Trump could follow a “conengagement”: a mixture of enhanced containment and engagement, as opposed to the “smart power” doctrine of the Obama years (Neill 2016).

The second option could be that the US retain a symbolic presence in the region and support the major regional powers to go nuclear. This will certainly pose regional deterrence to counter China and will prove restraint on Beijing to not to push any neighbour to the point of nuclear aggression. If China continues to exert its influence and power in the region, Asia-Pacific states most likely will join together to contain and constrain China, so as to ensure their own influence is not curtailed in this zero-sum game. China has already expressed its dissatisfaction over the new Indo-Pacific strategic construct since it believes this effort is being constructed, not only to deny China its rightful place in the international system, but to create multi-polarity, multilateralism and a so-called rules-based international order, all interfering with China’s one-on-one relations with its neighbours (Stuart-Fox 2004). Inclusion of the Indian Ocean region in this equation further raises China’s uneasiness that it is being bracketed and isolated by a wider-ranging containment strategy, one where a nuclear India is considered a threat to China’s ambitions in the medium-to-long term.

The third option could be that the US assumes a leading role in the Indo-Pacific region but auctions its security umbrella for bidding by the regional states. This means, the states could enter a deal based on individual security requirements and accordingly pay for the cover. Thus, the regional states have been building a credible deterrence by procuring their security under the US umbrella. Perhaps this is the most favourable proposition that Trump is indicating at corporate style stakeholders based paradigm.

To counter such manoeuvres, Beijing has established credible economic and infrastructure initiatives with the ASEAN states. In the process, China has become their most influential and, largest, trading partner. In a sense, “China lobbied for the exclusion of not only the United States but also India, Australia and New Zealand...from the East Asia Summit” (Lim 2014). Now, Beijing’s strategic intent and framework becomes clearer, as a desire to establish a unipolar Asia-Pacific region with China at the centre. In November 2014, President Xi Jinping, in his address to a Central Foreign Affairs Work Conference, while propping up a carrot and stick policy emphasised that “a proactive, balanced, and where necessary, muscular foreign policy approach is likely to be a hallmark of his rule”. At the same time while assuaging the concerns of its neighbours, Xi implored, “China’s rise can only be accomplished by peaceful means and will only be pursued with an eye toward achieving ‘win-win’ outcomes for all concerned” (Johnson 2014). Plying both offensive and defensive diplomacies, Beijing still remains on the defensive, mainly because of lack of reliable allies other than North Korea, Pakistan and potentially Russia. China is somewhat isolated in its own region of influence, as its aspirations of a China-centric, unipolar Asia appear

to be threatened by US military presence, interference and particularly military alliances (Indiandefence 2013).

Economically, China seeks to exert financial leverage against the US strategic forte by launching parallel institutions, such as Shanghai Cooperation Organisation and the BRICS Bank aimed at “re-writing of the international financial architecture and a gradual de-coupling from American Dollar hegemony” (Schmidt 2014). The establishment of the Asian Infrastructure Investment Bank (AIIB) can be seen as a continuation and expansion of this policy aimed to marginalise US banking and economic dominance at least in the developing countries (Huang 2015). The results of such follow up, notwithstanding conflict with China in the SCS, can be witnessed with Philippine President Rodrigo Duterte’s announcement of his country’s “separation” from the US, and Malaysian Prime Minister Najib Razak’s visit to China to sign new defence and investment agreements (Hookway 2016).

In either of the options available to the regional states, instead of carrying the burden of the alliance and partnerships, the Trump administration is likely to develop the regional security architect on a contributory basis. In addition to the regional setup, the US will have leverage over China to needle it at a time of its choosing by imposing tariff on Chinese imports, that other countries could also follow in unison. This will prove instrumental for the US to compute its strategic framework in a way that enhances its own strategic power equations. This will also serve the US envision of a unipolar world with a multipolar Asia, including an ambition to contain an increasingly militarily aggressive and territorially expansive China at its very door step. This will also be instrumental in checking China’s assertion of a multipolar world with a unipolar Asia.

Anyhow, it will take another twelve months or so for the Trump administration to unfold its Indo-Pacific strategy, come whatever form it takes but its basic tenets would not be very indistinct in the future.

It is quite evident that the US would like to retain its dominant role in the Asia-Pacific region otherwise there will be severe economic consequences for the US and may even erode its alliance framework that has served as the “bulwark for regional security since the end of World War Two”(Neill 2016). Even if Trump administration expresses limited interest in the Indo-Pacific region, China’s rise is viewed with suspicion by many regional states, because of fear of being pulled into a dependent, tribute-state relationship. In an evolving China-centric Asia, ASEAN meanwhile prefers the use of ASEAN-centric, multilateral institutions, based on “strategies that promote economic interdependence, commitment to ASEAN norms, and soft balancing” (Thayer 2012). Considering smaller size of the ASEAN states, they would prefer to be part of larger multilateral arrangements, rather than entering in unequal bilateral relations with a much larger and more powerful China. Furthermore, with China’s refusal to accept the arbitration court ruling, and a muted response by the regional countries has emboldened China’s flagrant claim over the SCS.

Even in a joint communique adopted on 25 July 2016 ASEAN Foreign Ministers' Meeting, under the Chinese pressure the Arbitration Court judgement was not even mentioned despite member states' direct involvement in the conflict. As against the spirit of the ASEAN, this has reduced the status of the regional sovereign countries to less than equal and has bolstered China to continue its reclamation activities even more vociferously during the US presidential transition. This has afforded China necessary timeframe to subdue or co-opt the regional countries that are directly involved in the SCS conflict. In a sense, Beijing has laid a foundation that it would engage with the other claimants at a bilateral level. For example is the Philippines President's change in stance from a US ally to anti-US and pro-China overture. Similarly, the president of Malaysia reverted his stance and not only supported China but also entered into defence agreements.

China has been highly skeptical when Obama announced an increased US presence in Australia and other states in Asia. Even Obama's visits to countries like Australia and India and other regional countries were translated by Beijing as aimed at controlling China's ambition to dominate the region. Measures like initiating rotational stationing of US forces in Australia, the Philippines, Japan and South Korea; signing civil nuclear agreement and Logistics Exchange Memorandum of Agreement (LEMOA) with India; installing Terminal High Altitude Area Defense (THAAD) system in South Korea; and promoting the Trans-Pacific Partnership regulatory and investment trade deal (that excludes China), attempts to resolve the South China Sea disputes in multilateral forums, against China's insistence on bilateral discussions, have further heightened China's apprehensions (Singh 2015).

Undoubtedly, such actions pose a serious security threat for regional states. The states are left with a few alternatives, such as increase their respective national defence budgets; unite into alliance arrangements; bandwagon against a rising China; or approach the US, the traditional regional peacekeeper, to seek assurance about its continued engagement in the region.

4. STRATEGIC IMPLICATIONS FOR AUSTRALIA AND INDIA

Any such transition in power, change in alliance system and assertion by a single power in the absence of a credible institutional framework will result in destabilisation in the Indo-Pacific region. Even for democratic countries like Australia and India there will be different but far reaching repercussions. Both India and Australia are non-claimants in the SCS but both support freedom of navigation, Law of the Sea (UNCLOS), peace and harmony in the region. They also support a status quo, that is the region is not dominated by any one country and the "overall balance of power remains favourable to the liberal democracies" (Malik 2016). With Donald Trump in the political horizon of the US several strategic policy variations are quite imperative, as he intends to "reduce America's role in the world...take unilateral action, move away from traditional allies and move closer to adversaries" (Fisher 2016).³⁹ Trump has described Obama's foreign policy as a "complete and total disaster" (Belot and Keany 2016). These changes will have different connotations for both Australia and India.

Australia

Since the end of the Second World War, Australia has been an ANZUS alliance partner of the US. Resultantly, it has sacrificed with blood and treasure in the wars fought by the US but at the same time has availed security without investing heavily in its defence sector. With Donald Trump's ascendancy to the White House, initial policy overtures indicate that the alliance partners will be cajoled to contribute more to maintain and withstand the alliance. As Trump indicated "he would diminish or possibly abandon American commitments to security alliances. That includes NATO and defence treaties with Japan and South Korea" (Fisher 2016). Though Australia is being not named but it is implicit that similar terms will be applicable to Australia as to the other alliance members.

Geo-strategically placed in the proximity of Asia, dependent on the alliance formatting by the Trump administration, Australia will be limited to three choices. First, the ANZUS alliance continues as such, and Australia continues to provide the logistic support such as base in Darwin and facilities in Perth and on some of the islands. Second, Australia will be asked to enhance its financial contribution to retain the current level of alliance. In this case Australia, may contribute a couple of more billion dollars. Third, Australia may consider stepping out of the alliance and actively engage in the regional strategic dynamics. A rationale for this option can be that in the post-Cold War period the 1951 ANZUS Treaty has brought more pain than gain to Australia.

The above equations will require lot of thinking and retrospection among Australian policymakers and intellectuals as how to respond to this core issue as well as the addendum like Trump's suggestion that more countries should acquire nuclear weapons, and his inflection to mend fence with Russia.

Leading experts on Australia's security have opined that Australia should calibrate a space between alliance and autonomy for itself in the Asian Century. Thomas Wright while supporting this view, states: "Australia's defence relationships, including its military alliance with the United States, would be at risk" and "Australia's strategic environment will be transformed overnight"(Winsor 2016). In this regard Hugh White has also stressed that there is a "major blow" to Canberra's assertion that the US would "remain the primary strategic power in Asia indefinitely". Against this backdrop, White suggests that Australia should not "turn to China and seek the kind of alliance...that we have had with America or Britain". While Australia can "no longer prudently expect America to remain the dominant power in Asia", rather Australia should fathom "what kind of role might [the US] be willing and able to play, and how could [Australia] encourage it to do so?". Yet another aspect White suggests is that Australia "should start seriously adapting both...diplomacy and...defence policy for the possibility that, despite our best efforts, America's role in Asia and our alliance with America are not going to last much longer" (White 2016).

Further sensing the evolving implications, Paul Keating supports the continuation of alliance but “what we have to do is make our way in Asia ourselves with an independent foreign policy.... Our future is basically in the region around us in South East Asia”. However, John Howard while being more optimistic underlines the continuity of the alliance: “So those people who are talking about the need for some kind of radical recasting of our attitude towards the United States forget the reality that this is a relationship so deeply embedded in history and sentiment that it survives changes of personnel both in Canberra and Washington”(Sales and Wearing 2016). To balance between such optimisms and apprehensions, it is vital that the Australian government need to re-think its engagement with the Indo-Pacific countries. As a former Indonesian ambassador underlined:

“Politically, Australia is still stuck in 20th century mode. It is a monarchy with a head of state in London, and all its security arrangements are Cold War relics, whereby they take orders from Washington. Australia is out of sync with the emerging geopolitical environment of Asia today. Until Australia fixes this anomaly and moves into the 21st century, it is hard for Indonesia and the rest of Asia to take Australia more seriously” (Davies 2015).

Similarly, Michael Wesley (2013) details the impending challenges for Australia that it “needs to become highly attentive to the strategic dynamics in a number of key areas where conflict is most likely to occur”. Emphasising on the regional landscape, as per Wesley, Canberra “needs to take three bays and three peninsulas very seriously; the bay of the Arabian Sea, the Bay of Bengal and the South China Sea; and the peninsulas of the West Pacific, from Japan down to Taiwan, the Indo-Pacific from Thailand down to Malaysia; and the south Asian peninsula – the sub-continent.” Furthermore, the countries in the region that have the coastlines heavily rely on their access to shipping lanes, and as a consequence the region is witnessing getting a build-up of the military might.

Since 14 September 2014, when Operation Okra launched its Air Task Group (ATG) of eight F/A-18F Super Hornets, an E-7A Wedgetail AEW&C aircraft, and a KC-30A air-to-air refuelling tanker, along with a Special Operations Task Force to the Middle East to counter Daesh forces (Dept of Defence 2014), Australia has witnessed an escalation in cases related to Islamic extremism and home-grown terrorists on its soil. Yet another offshoot of Australia’s involvement in US led wars is that radicalisation continues to breed in Australia, despite the government’s all-out measures to combat home-grown terrorism. Prime Minister Malcolm Turnbull has continuously reassured that by collaborating with the US-led coalition force against ISIL will only deter Islamist ideology (March et al 2016). In this case, no doubt Trump has vowed to fight with extremists with force. But this will not cover the Australian citizens and the radicalisation process that is underway in Australia. In 2015–16, Australia’s Defence budget increased from \$29.2 billion in 2014-15 to \$32.3 billion. The spending included \$686 million on operations in Afghanistan, Iraq, Syria and

other Middle Eastern missions. This puts defence spending for 2016 at 1.88 per cent of GDP (Nicholson 2016).

Notwithstanding this, a Lowy Institute report released in September 2014 indicated that the number of Islamic extremism and radicalisation cases are on increase in Australia (Lane and Jackson 2016). Thus a popular opinion emerging in Australia is to surrender the ANZUS Treaty and adopt a 'Non-Military Intervention' in the Middle East conflict, this will reap benefits for Australia in terms of national security. In comparison, New Zealand's non-obligatory commitments to the ANZUS Treaty, contributed only eight New Zealand Defence Force personnel to serve as part of the United Nations Truce Supervision Organisation (UNTSO) in the Middle East proved more successful. A positive outcome of this is that there have been no reports of Islamic extremism in New Zealand since 9/11. Moreover, Trump's preference to use indiscriminate force to decimate the terrorism may result in a serious risk that Australia may be dragged into another war in the Middle East. Past experience suggests that any such war is likely to be hugely costly and difficult to "win" (The Conversation 2016).

On the issue of developing nuclear weapons as suggested by Trump, there have been several debates in Australia, but considering its geo-strategic location Canberra remains reticent on this issue. Even Australia's affirmation to President George Bush's assertion for pre-emptive strikes in the wake of 9/11 attracted not only attention but also criticism from its Asian neighbours. Thus, it appears Australia will not create a situation of trust deficit with its neighbours hence does not plan for development of nuclear weapons.

Australia has had issues previously with the Soviet Union and currently with Russia. Mainly on issues such as use of force in Ukraine to carve out Crimea and Australia's suspicion of Russia's involvement in the downing of Malaysian Airlines Flight 17, which claimed the lives of 38 Australians (SMH 2014). Australia accused Russian-backed rebels who used Russian-supplied equipment as murderers. Moreover, Australia's "bitter manifestations from the infamous 'shirt-fronting' threat by then-Prime Minister Tony Abbott to actual economic sanctions arranged by the United States and EU and joined by Australia" (Tsvetov 2016). Moscow's conduct of naval exercises with China just around the arbitration decision and presence of Russian naval vessels close to Australian waters before the G20 summit in 2014, all reflect trust deficit between the two countries.

To sum up, Australia's fight against terrorism, development of nuclear weapons, to remain in alliance and relations with Russia are all difficult issues, that appear to be out of the narrative of the strategic landscape that Trump envisages to draw. Therefore, Canberra should think out of its ANZUS alliance and consider the evolving regional strategic imperatives.

India

Since independence India has followed the non-alignment policy, and since disintegration of the Soviet Union while inching closer to the US has maintained a strategic autonomy. To retain

this strategic calculus, India does not subscribe to the notion that a more active America is always good for India. New Delhi, with the objective of matching power with a militarily (and not so peacefully) rising China, envisions a multipolar world with a multipolar Asia, while supporting a global order conducive to its aspirations of maintaining strategic autonomy in international affairs (Ahlawat and Smith 2016).

To maximise its national interest, India in its strategic competition with China, aims to exert pressure on Beijing for strategic balancing by using its improved strategic relationship with the US as a hedge against China, without entering into any close strategic or security alliance but also by developing its credible strategic deterrence through launch of ballistic missiles Agni V and VI and commissioning the *Brahmos* supersonic missiles in areas claimed by China (Villasanta 2016). So Trump's dilution of its alliance system in the Asia-Pacific may prove advantageous to India's strategic game plan. With thinning of the US presence, the regional states are likely to hinge on India. The strategic competition between China and Asia-Pacific countries might actually benefit India and increase its value as a durable partner in 'middle power coalitions' (Medcalf and Mohan 2014). When that happens, sovereign nations affected by China's aggressive geo-political ambition might veer towards a rising naval power like India.

Trump's rapprochement with Vladimir Putin is yet another positive factor for India. New Delhi while continuing its historic friendship treaty with Russia and orienting its strategic *manoeuvres* towards the US was hard pressed between the two big powers. The rapprochement will place India comfortably to have equally better relations with both the US and Russia. This will make India strategically at ease as the Russia that was pushed closer to China through sanctions by the NATO states, will be out of castigation and will play a more balanced role *vis-à-vis* China.

Trump has favoured nuclear weapons option for the Asia-Pacific countries, in this regard, India already has a lead, more so the existing civil nuclear agreement with the US will further bolster India's clout as a nuclear power. This will further enhance India's credentials to seek membership of the Nuclear Suppliers Group, that China has obstructed on the basis of India being a non-NPT signatory. So, this policy posture will prove enabler to increase pressure on China.

Yet another factor that will go in favour of India will be the cross-border terrorism issue, that India accuses emanates from its western neighbour. Trump has publicly stated to counter the Islamist terrorism through extreme measures. Even he has directly criticised Pakistan for its role in terrorism. In a talk to CNN, Trump discussed the gravity of the "cocktail of radical Islamist terrorism and nuclear weaponry that is brewing in Pakistan", yet at another occasion on a radio talk show, Trump emphatically stressed, "Pakistan is the world's most dangerous country and the US needs to work very closely with India to check it. I have great respect for India" (Talukdar 2016).

Considering the momentum built in the security and trade relations, signing of the LEMOA, agreements to share intelligence and logistics information and on the top of this India being the biggest importer of the weapons in the world will certainly remain dear to the Trump administration. All these developments indicate a strengthening relationship between the two countries. Based on the above discussed convergence of interests, Trump can build on the platform laid by former presidents Bush and Obama. Obama in his address to the Indian Parliament specified that “the relationship between India and America will be one of the defining partnerships of the 21st century, rooted in common values and interests” (Obama 2011). India considers that in order to counter Chinese hegemonic strategies, it is essential to draw an understanding with the US on core issues such as freedom of navigation, multilateral framework, and applicability of international law. Giving credence to its convergence with US policy postures in the region, New Delhi signed the benchmark US-India Joint Strategic Vision for the Asia-Pacific and Indian Ocean Region in 2015 (The White House 2015).

On multiple occasions, Trump has expressed his intention to engage India, if not for strategic considerations, at least in business and trade. He couched in unequivocal words that if he is elected president, “Indian...community will have a true friend in the White House”. Further he added, “We would be best friends....We are for free trade. We are going to have a phenomenal future together” (Talukdar).

Notwithstanding the above convergence of interests between India and the US, despite China’s championing of the concept of a multi-polar world order, India remains concerned that, “alignment between Washington and its rival [China] would place it in a very difficult strategic situation” (Ambrosio 2005). Moreover, if Trump administration perceives a “lesser threat from China, ...eager to accommodate Chinese preferences in Asia, and is less interested in upholding US primacy, it may have less of a stake in actively supporting India’s rise” (Panda 2016).

Under Prime Minister Narendra Modi, India seeks a more visible and leading role in Asia by achieving a broader understanding with China about its due place in the regional order, a closer security relationship with the US, Australia, Japan, Indonesia, Vietnam and other ASEAN nations, and a more prominent role in regional institutions and security architectures (Cronin and Baruah 2014). India understands its geo-strategic importance that Kaplan appropriately underlined, “the direction India tilts could determine the course of geopolitics in Eurasia in the 21st century. India, in other words, looms as the ultimate pivot state” (Kaplan 2010).

5. CONCLUSION

The Trump administration will introduce tectonic changes in its security and strategic relations. No doubt, in the near future the relations with China will be a see-saw game. Initial overtures indicate that the US will accord more space to China in its vicinity but on negotiated conditions. Thus, as witnessed in the Arbitration court ruling, China in defiance has asserted its

power dynamics for a unilateral Asia under its influence. This has been witnessed, while the Trump administration is in transition, China has neutralised regional countries like Philippines and Malaysia and strengthened bilateral relations with them and other states. The regional organisations like ASEAN have also not proved to take a united stand. The traditional US alliance partners will face heat to accommodate the burden sharing, however it is unclear as to under what formulae these countries will adjust and accommodate the US. India is poised to benefit from the counter-terrorism, nuclear weapons, rapprochement with Russia and being a non-alliance partner. However, Australia will be hard pressed to make a decision whether to remain in alliance and if this be so under what terms. Considering the home-grown terrorism and radicalisation, it will remain out of the scope of the Trump policy on Islamic terrorism. Again, Russia factor and nuclear weapons issue will keep Australia drifted from the US. In conclusion, in Trump's efforts to "make America great again" China will assertively negotiate for its role, India will turn out as a natural partner and Australia will have to consider for the options that serve its interest best in the long-term.

Endnotes

¹ In Australia, shirt-fronting means to grab somebody roughly by the shirt to give a shove.

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India and Australia on UN Security Council Reform: A Comparative Perspective

Yeshe Choedon*

Abstract

Both India and Australia have keen interests in the subject of UN Security Council reforms. Due to the differences in their historical experience in engagement with international relations and ideological convictions, both the countries have different perspectives about the Security Council membership and veto regulations. The paper discusses the matter, the reasons and implications, in detail. The central focus of the paper is why and how the positions of India and Australia on UN Security Council reform differ in the post-Cold War and why and how Australia made a nuanced change in its position in recent years. It is intended to highlight the significant similarities and differences between the two countries on Security Council reform.

Key Words: India, Australia, UN Security Council reform, Veto power

1. INTRODUCTION

A country's perception of, and stand on, major global issues is shaped by historical experience, philosophical tradition, ideological orientation, the power configuration, and the situational context. As these factors vary among countries, their positions on global issues differ. These factors also do not remain static, and, therefore, a country's perception and stand on issues also undergoes change over a period. Due to the differences in their historical experience in engagement with international relations and ideological convictions, India perceived the imperative of permanent membership for the major powers with veto power for their harmonious relations, whereas Australia was against categorization of big and small powers with the privilege of permanent membership with veto power for the major powers. When permanent membership became inevitable, Australia tried to restrict the use of veto power, but, in vain. The onset of the Cold War and the deadlock in the Security Council brought about an opportunity for the middle powers like India and Australia to play a significant role in the management of international conflicts. They adopted identical proactive engagement in conceptualization and operationalization of the United Nations (UN) peacekeeping operations as an alternative mechanism to manage conflict situations in the world.

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However, a substantive divergence of their foreign policy orientations occurred with the intensification of the Cold War. Subsequently, their perception and stand on global issues, including the misuse/abuse of the UN Security Council, diverged as Australia opted to align with the Western bloc and toe their line, whereas India emerged as the leader of the nonaligned and developing countries, and tried to moderate the intensity of the Cold War. The divergence of their perceptions and stands further widened in the post-Cold War period when the relationship between Australia and the US got further entrenched with Australia on some occasions trying to prove itself more loyal to the US than some of the US's traditional Western allies.

This divergence was reflected in their stand on the issue of Security Council reform, which has become a major agenda in the post-Cold War. The developing countries had become apprehensive of the increasing unanimity among the P5² and the activism of the UN Security Council in dealing with conflict situations robustly mostly in the developing countries. In such an atmosphere the developing countries demanded reform of the Security Council to have more effective representation and participation in the decision-making of the Council. The current phase of discussion on Security Council reform started in the early 1990s and reached its peak in 2005 with the expectation of having a decision at the world summit. It became one of the most contested issues as it relates not just to a seat in the Council but also link to power and status. However, due to fierce contestation among the countries, no decision could be taken at the summit of 2005. The focus on reform once again gathered momentum since 2007. In September 2015, the member countries agreed that, instead of endless discussions, they should have a framework text for negotiation. Some countries regarded this decision as a breakthrough, whereas others considered it just a technical and procedural decision.

Initially, India and Australia's positions on Security Council reform diverged significantly as Australia's view was aligned with that of the US, whereas India was a leading voice of the developing countries. However, the modification of Australia's stand and greater involvement in the reform debates has been deduced in the later period to protect and promote its interests, and its position on some of the issues of the Security Council also reflects its geopolitical reality and aspiration as a middle power.

This paper begins by laying out the backdrop by discussing how the two countries adopted varying positions on the categorization of the member states and the privilege of veto power for the permanent members at the San Francisco conference. It moves on to discuss how the deadlock among the major powers in the UN Security Council enabled India and Australia to play a significant role in managing the conflicts in the world. Then it discusses why these countries adopted divergent approaches to global issues during the Cold War period. The central focus of the paper is why and how the positions of India and Australia on UN Security Council reform differ in the post-Cold War and why and how Australia made a nuanced change in its position in recent years. It is intended to highlight the significant similarities and differences between the two countries on Security Council reform.

2. BACKGROUND

The UN Security Council is the most important principal organ as it is mandated to be the nerve center for managing peace and security under the collective security system. India and Australia were in the category of middle power at the time of the drafting of the UN Charter, and both had strong views about the permanent membership and veto power of the Great Powers. Once India realized that the superpowers would not join the organization without having the permanent membership with veto power, India did not oppose these privileges for the Great Powers. However, it insisted that the Charter should be open to revision in about ten years without the right to veto on this process (Rajan 1973). Although India claimed at the San Francisco conference that it had greater credentials than some of the designated permanent members, it did not stake its claim for such membership. Instead, it called for a creation of associate membership (with a permanent seat but without the right to vote) to ensure continuity of experience, instead of just a short period occasionally as a non-permanent member.

On the other hand, Australia was strongly against categorization of members as big and small powers and accord of veto power for the permanent members (GoA 2005). When it became apparent that permanent membership for the big powers had become inevitable, Australia persistently argued for the need to limit the use of veto power. Its representative proposed at the San Francisco Conference that the use of veto on the specific settlement of disputes, i.e. Chapter VI of the UN Charter, be exempt. However, the proposal was defeated (Rajan 1973). So India and Australia had diverse perspectives on permanent membership for the big powers and veto power during the drafting of the UN Charter.

When the UN Security Council failed to operationalize the collective security system due to strain in the relations between the superpowers, the middle powers like India, Australia, and Canada got an opportunity to play an active role on the global stage. The moral imperative to do something to address the conflict enabled the middle powers to play a pioneering role to devise an alternative mechanism in the form of the peacekeeping operation system. Thus, instead of the major powers, it was the middle powers that were active in piloting neutral resolutions either in the Security Council or the General Assembly, eliciting contributions of troops and other material from the middle and small powers to deploy as the UN forces in conflict situations (Choedon 2007). These middle powers were also actively engaged with the UN officials in devising the general guiding principles which later stood in good stead and became important reference points for the peacekeeping operations even today.

However, India and Australia parted company as the polarization of international relations sharpened with the intensification of the Cold War. Australia joined the military alliance with the Western bloc. The Australia, New Zealand, and United States (ANZUS) treaty of 1951 provided much-needed assurance that a 'great and powerful friend' would underwrite Australian defense (Malik 2007). On the other hand, India and other countries, which cherished their sovereignty

highly, did not want to be camp followers, and, therefore, opted for nonaligned policy. Thus, the two countries took diverse paths with the balance of power came to dominate Australian strategic thought, whereas India emerged as one of the prominent leaders of the nonaligned movement. Through its campaign for decolonization, anti-racism, and equity in economic development, India emerged as an influential power at international forums. Though it lacked power in terms of military and economic resources, India could exercise disproportionate influence on sheer moral grounds (Rana 1970). Thus, the geopolitical landscape of the Cold War made these two countries adopt opposing positions on global issues.

The divergence of Indian and Australian foreign policies did not soften in the changed situational context of the post-Cold War. Specifically, the reduced threat to Australia's security in the post-Cold War did not affect Australia–US relations. In fact, their relationship was further entrenched with an attempt by Australia to prove itself as more loyal to the US than some of its traditional Western allies, particularly in the participation of the US-led 'coalition of state' military operations (Vaughn 2004:106). Military operations of this nature became possible in the unipolar phase of the post-Cold War. There was much more cooperation and understanding among the permanent members, and they could take more decisions than ever before. Through creative interpretation of the UN Charter, the permanent members could not only expand the scope of the Security Council by making internal conflict an international concern, but they also authorized intrusive military intervention on humanitarian grounds in many of the developing countries. Most of those decisions were taken at the informal meeting of the P5, and they were subsequently endorsed in the formal meeting of the Council, without much chance even for the non-permanent members to express their opinions (Choedon 2007).

Australia has been an active participant in US-led military operations, such as 'Operation Desert Storm' of the first Gulf War (1990–91), and the Unified Task Force in Somalia (UNITAF). The conservative coalition government under John Howard had given unconditional and enthusiastic support to the Bush Administration's foreign policy agenda, specifically the global war on terrorism (GWOT) and encouraged the ill-considered intervention in Iraq in 2003 (Beeson 2007). It also participated actively in the NATO-led International Security Assistance Force (ISAF) in Afghanistan and was "...the largest non-NATO contributor to the International Security Assistance Force in Afghanistan" (GoA 2005).

There is no countervailing force to check the Western powers from going about redesigning the world in their own image and interest. The increased activism of the UN Security Council, specially authorizing 'use of force' in dealing with internal conflicts, the practice of sub-contracting UN operations to other actors and the general perception of misuse of the UN Security Council compelled the developing countries to demand reform of the UN Security Council. They wanted a reform that would be a better reflection of their priorities in the Security Council, to make it more representative to enable it to function with requisite authority and legitimacy.

3. MOMENTUM FOR REFORM

It was at the Nonalignment Movement's (NAM) Summit in Jakarta in September 1992 that the demand for reform of the UN Security Council was raised for the first time after the Cold War. At the summit, concern was expressed "over the tendency of some states to dominate the Council", and that, "the veto, which guarantees an exclusive and dominant role for the permanent members of the Council, are contrary to the aim of democratizing the United Nations and must, therefore, be reviewed" (UN 1992). At the insistence of India and 35 other nonaligned states, the item of UN Security Council reform was included in the agenda of the 48th session of the General Assembly (1993–94). As the diversity of the position taken by member states was striking, the General Assembly established "an Open-Ended Working Group (OEWG)" as a formal forum for consultations on reform of both the expansion of the Council under Cluster I and working methods under Cluster II. The reports of the OEWG in 1994 indicated the divergence of views related mainly to the composition of Cluster I. They differed on four related issues of the future size of the Council, the categories, the criteria for membership, and veto power.

Differences over the future size of the Council ran along the line of the North-South divide. The states from the Global North favored limited increase in overall membership of the Council as expansion in composition necessarily amounted to undermining their dominant position and influence. Officially, they reasoned that substantial expansion might impede the Council's ability to fulfill its mission speedily and efficiently. Australia had a similar view as that of the Global North as it also favored a limit of 20 members as "appropriate to maintain operability" (UN 1993:8). However, the states from the Global South, including India, called for a larger increase in the membership to improve their representation in the Council. For instance, India was of the view that the number of permanent members should be increased to ten or eleven and the non-permanent members to twelve or fourteen (UN 1993: 47).

The second significant difference was in the form of expansion. The member states were divided on whether there should be a new category, or to continue with the existing two categories of membership. Suggestions had been made for the inclusion of five or six additional permanent members to correct the outdated composition of the Council's permanent membership. Among those who sought an expansion in permanent membership included important regional states such as Nigeria, Indonesia, India and South Africa. They also supported the expansion of non-permanent members. Australia also preferred the expansion of permanent members as it publicly supported Japan's candidature for permanent membership (UN 1993:9). This position of Australia was in line with that of the US, which supported both Japan and Germany for permanent membership for the financial reason for sharing the burden of the UN's expenditure.

There were also some states such as Argentina, Malaysia, Mexico, and Pakistan which were against the expansion of the category of permanent members. They believed that an increase in the number of permanent seats, with or without the veto, would only serve the interests of the

few and alienate the majority of the states, thus exacerbating existing inequalities in the Council. In reality, opposition to the idea of permanent seat arose out of the fear that their regional rivals would get the permanent seat, and the latter would be able to exercise regional hegemony in the respective regions (UN 1995:7). This group of states favored enlargement of only the non-permanent category as it would provide better opportunities for more states to serve on the Council, contributing to further democratization of the United Nations. Like other middle powers Australia seemed to aspire for more frequent election to the Council as a non-permanent member. It supported the call for amending Article 23 of the Charter to remove the existing prohibition on immediate election after completing a term as a non-permanent member of the Security Council (UN 1992:10). Thus, it is clear from the above analysis that although India and Australia supported the expansion of both the categories of membership, the rationale for their support varied.

Some other states, notably the African states, envisaged the sharing of seats by a group of states, (“permanent regional rotating seats”) and that these seats should rotate among members of the respective regional group, according to the criteria established by the region. There was no indication that Australia supported this proposal. India had gone on record opposing the regional rotation scheme as discriminatory because only developing countries would be subjected to this procedure. India was of the view that, “All Member States should be given an opportunity to exercise their choice of new permanent members of the Security Council collectively in the General Assembly, as responsibilities of permanent members go beyond a region or sub-region” (UN 1992:48)

The third major issue was of the criteria for enlarging the composition of the Council. The suggestion was made that the Charter’s two-part criteria in Article 23, which is currently applicable to the election of non-permanent members, should be amplified and applied to all categories of members. The view was also expressed the two non-represented geographical regions, Latin America and Africa along with the underrepresented region of Asia, should get a permanent membership, at least, one for each region. Within each region, consideration must be given to factors like population, relative regional influence/stature, the size of the economy, and future potential as criteria for selection as a permanent member. India, for example, believed that consistency in support for and participation in important political and economic activities and peacekeeping operations of the UN and in fulfilling financial obligations should be the most important considerations in judging the suitability of a state for permanent membership. India also proposed that the population of a state and the size of its economy should be taken into account as criteria for selection (UN 1992:47). India’s claim for permanent membership is also based on the ground of its status as a “responsible” nuclear-weapon state. Germany and Japan underlined elements like the importance of economic strength and financial contribution to UN activities. Australia was of the view that permanent seats should be given to the states “keeping with their role in international peace and security” (UN 1998:15). This position of Australia was similar to that of India, but India’s stance was more explicit and elaborate to strengthen its claim for membership.

The fourth and final issue of divergence was on the veto provision. A large number of countries regarded the veto as anachronistic and sought its eventual abolition. They argued that the mere existence of the veto constituted a constant threat to the decision-making process in the Security Council. They asserted that it was intrinsically undemocratic and that its existence was contrary to the principle of the sovereign equality of all member states. The radical proposal aiming at a total removal of the right of veto from the Charter was suggested in some quarters, whereas more guarded ones suggested certain modifications and limitations. None of the existing holders of veto power gave the slightest indication of considering any such proposal. Supporters of the veto asserted that it was never intended to be democratic, but rather had been a useful device which had helped to preserve unanimity among the Permanent Members, and had ensured the continued participation of the major powers in the organization. India and other aspirants to permanent membership were of the view that as long as veto power existed, the new permanent members should also get it. Australia, which was against veto power at the San Francisco conference in 1945, had mellowed significantly by the early 1990s. It was of the view that questioning the validity of veto power of the current permanent members would be counterproductive. However, it was not in favor of the extension of veto power to the new permanent members (UN 1992:9).

Overall, Australia's position on the expansion of the UN Security Council was somewhat similar to that of the US, as it also advocated a modest expansion due to the concern over efficiency, and initially advocated permanent membership to Japan and later it also supported Germany's candidature (UN 1998:19). By 2003, Australia proposed that the Security Council become a three-tiered body with Indonesia, India, Japan, Germany and Brazil joining as permanent members without a veto. It was of the view that this kind of expansion would give the largest Muslim country a permanent seat, and increase the representation of developing countries amongst the permanent membership (Langmore 2008). This support for Indonesia also must have been motivated to strengthen their bilateral relationship as they were working closely together to combat terrorism (Vaughn 2004:100). In the post-2003 military action against Iraq, once again one notices a change of Australia's position in line with that of the US. Just as the US dropped its support for Germany after their differences over the operation in Iraq of 2003, Australia also followed suit. A media release of 3 December 2004 stated: "Australia has long supported expanding the permanent membership of the Security Council through the addition of Japan, India, Brazil, an African country and possibly Indonesia."³ In a statement at the United Nations, the Australian representative also stated that, "Australia considers the claims of Japan and India to be clear. Australia also continues to support Brazil and appropriate African representation" (UN 2006:19). There was no mention after that in the Australian statements of Germany as a prospective candidate. Thus, Australia's stand on the issue is similar to that of the Global North to a great extent, whereas India's stand was contradictory to a significant degree from the position of the Global North, including Australia.

However, Australia's position was not completely identical to that of the Global North as there was variance that reflected its aspiration as a middle power and its geopolitical considerations. Unlike the US, Australia insisted that the changes to the Council's composition must be related to

and considered in tandem with a review of the Council's decision-making methods. Specifically, the Australian representative was of the view that to retain legitimacy, the Security Council should be: "willing to turn its attention to threats to international peace and security as the situation warrants rather than in accordance with the dictates of the national interests of Council members. To do this, the Council need to ensure that it is well informed of the views of non-permanent members, and of the wider United Nations membership" (UN 1992:8). Another issue on which Australia insisted was the need for all permanent members of the Council, old and new, to remain accountable for their performance, and that any new arrangements for the Council be reviewed after ten or fifteen years (UN 2000:26). India had no issue with these demands, and, in fact, it supported them.

A new spurt of activities regarding the reform of the Security Council arose when the United Nations faced an acute political crisis following the divisive debate over the use of force in Iraq in 2003. The relevance of the United Nations was questioned, which prompted the Secretary General to appoint the High-Level Panel to examine the whole gamut of UN reform. The panel reached a conclusion that a decision on the enlargement of the Security Council was a necessity, but given the divergent opinions the panel proposed two options for expansion. Model A suggested adding six new permanent seats without veto power and three new two-year-term non-permanent seats. Model B suggested no new permanent seats but to create a new category of eight four-year renewable-term seats and one new two-year non-permanent and non-renewable seat. With an attempt to have a decision on reform at the UN summit in September 2005, the Secretary General urged the members to consider these two options.

However, the vast majority of the members, instead of considering the two models, got divided into two groups fiercely contesting each other's positions. Japan, India, Brazil and Germany, all influential middle powers, came together as the Group of Four (G-4), lobbying for permanent seats on the Security Council with veto power and put up their proposal of reform. When they realized that the majority of the member states, including Australia, were against veto power, they decided to forgo their claim to veto power to get wider support but insisted on revisiting the veto question in fifteen years. On the other hand, their regional opponents, working together as a unified opposition informally known as the Coffee Club and later called the "Uniting for Consensus" (UfC) Group, favored increasing only the non-permanent seats and lifting the prohibition on the immediate re-election of Article 23 of the Charter. The third group, of African states, put up their proposal insisting not only on more seats for Africa, but also stuck to their demand of veto power for the new permanent members and regional rotation of the permanent seats (Choedon 2007:25-26).

Australia did not belong to any of these three groups. It welcomed the report of the High-level Panel and stated: "Australia has long supported expanding the permanent membership of the Security Council through the addition of Japan, India, Brazil, an African country and possibly Indonesia".⁴ As there was no possibility of getting the required two-third majorities in any of the

three draft resolutions, they were not put to vote. Thus, the high hope of reaching a decision on expansion of the UN Security Council on the 60th anniversary of the founding of the United Nations evaporated.

4. ATTEMPTS AFTER 2005

A new initiative for the enlargement of the Security Council was once again started when, in 2007, the President of the General Assembly appointed five facilitators to gauge the views of member states on the reform of the Security Council. They came up with a report suggesting an interim transitional measure. They proposed having partial reform while retaining the option of revisiting, evaluating, amending—or perhaps even changing them—at a mandatory review conference at the agreed upon time. They suggested that “without prejudice to the prospect of creating new permanent seats, could explore the creation of new non-permanent seats as well as an intermediate category” (UN 2007)

The G-4 members lamented that the report of the facilitators did not indicate that there was a substantial consensus within the membership towards approving an enlargement in both permanent and non-permanent membership. In particular, Germany was very forthright and called for a vote that would help determine where the majority stand. India noted that although expansion in both categories had reached almost two-thirds support, this was not reflected in the report of the facilitators. India suggested having a better negotiating text that would have the majority view and integrate the minority opinion as well. Its representative stated, “The time now is for negotiations...you designate a couple of Facilitators to prepare the negotiation process” (Sen 2007).

After that, the discussion moved towards the need for embarking on negotiations rather than mere discussion. Under India’s leadership, the L-69 group (a group of developing countries from Africa, Latin America and the Caribbean, Asia and the Pacific, including Brazil, Nigeria and South Africa) put forward a proposal on 11 September 2007 which focused on achieving lasting and comprehensive reforms of the UN Security Council. The proposal consisted of the following main points:

- Expansion in both permanent and non-permanent categories
- Greater representation of developing countries, including island states and small states
- Representation of developed countries and those with transition economies reflective of the contemporary world realities
- Comprehensive improvement in the working methods of the Security Council

- Equitable geographical distribution
- Provision for a review (UN 2007a).

According to the Indian representative, the primary purpose behind the L-69 proposal was to generate 'some momentum' to an otherwise painfully slow process. The proposal met with a strong reaction and produced acrimonious exchanges among members. As a result, the L-69 proposal of 2007 was withdrawn without being put to vote. However, it achieved its purpose as the General Assembly established a new mechanism of Intergovernmental Negotiation (IGN) on Security Council Reform to negotiate a text for the bases of discussion. The members of the UfC were opposed to this mechanism, but the General Assembly approved it. After that, the theatre of activity shifted from the OEWG to the IGN. Those countries which favored Security Council reform sooner welcomed the mechanism of intergovernmental negotiation.

Australia is of the view that the world had changed a great deal in the previous six decades and felt the need to ensure that the United Nations security structures accurately reflected the impact of those changes (UN 2006:19). It considers that the overriding imperative is to find a way to move the reform debate away from sterile discussions. It favors the IGN mechanism as a way of gathering momentum for the reform. Rudd stated at the General Assembly in September 2008 that the Security Council needed reform and that, "Australia supports the expansion of its permanent membership to reflect changes in the world since 1945" (UN 2008:39) This position of Australia is similar to India's position.

The meetings of IGN were held from 4 March 2009 onwards to find a common base for negotiation. On 10 May 2010, the "negotiation text" was sent to the member states, including an annex of 29 pages comprising the 30 clashing proposals that Tanin, as the head of IGN, had received from individual countries and groupings of member states. The text served the purpose of clarifying the diverse positions propounded by different countries and groupings. India is a member of both the G-4 and L-69 groups devoted to early reform of the Security Council. The views of these two groups have some common elements. The G-4 called for shortening of the negotiation text and expressed the hope that the President of the General Assembly would provide more guidance and leadership in the process. But the African Group made it clear that any effort to produce a shortened version would be a waste of time as long as the key principles of reform were not first agreed. The UfC stated the need to ensure the broadest consensus on all the major issues. On 25 September 2014 the G-4 foreign ministers said in New York that the reform process "should not be seen as an endless exercise", and all the members were appealed to make the 70th anniversary of the United Nations as the target date for reform. After long and intense discussions within the IGN, the General Assembly President achieved a breakthrough of sorts by circulating a text to members. The UN General Assembly decided by consensus on 14 September 2015 to begin text-based negotiations.

It is a significant development as, after more than two decades of discussions, there is a text-based framework to commence negotiations, and it is regarded as an indication of broad support of the international community to move forward on this issue. Some of the member states hailed it as a 'landmark' decision, but others called it technical rather than substantive progress (UN 2015). The Indian representative regarded the decision a real historic initiative and stated that it was "not a technical or rollover decision". Rather, it was highly substantive, as for the first time, a decision on reform had been adopted through an official 'L document'. He was of the view that the text had set negotiations on an irreversible, text-based path, meeting the twin goals of preserving work done in the sixty-ninth session and carrying it forward (UN 2015). India has been among the first to seek an end to the process in the seventieth session. Australia is of the view that the UN General Assembly's 69th session has made substantial progress in the IGN and believed that the time had now come to move to text-based negotiations on Council reform (UN 2015). So, on the issue of expansion of the UN Security Council, there is not much of a difference between Australia and India in the post-2005 era.

However, the major difference between the two countries appears to be on their positions on the Small Five Group's (S-5) proposal of reforming the working methods of the Security Council. Australia has been supporting the S-5 since 2006. It regards the S-5 proposal as logical, sensible and achievable (Quinlan 2012). It favored "shifting the ground a little" and "make early concerted efforts" to realize immediate and tangible benefits in improving working methods. Its delegate also stated that "the impasse on forging consensus on the composition and size of a reformed Council should not serve as an obstacle to achieving meaningful reform of the Council's working methods" (UN 2010). However, many UN member nations, including India, noted in varying degrees their appreciation for the S-5 proposal but did not offer much political support since they were afraid that any progress in this regard might reduce the political pressure for expansion of the Council. India and other members of the G-4 stressed that the G-4 draft resolution also highlighted reform of the working methods of the Council as an important element of the overall reform. India specifically pointed out that the S-5 proposal outside the forum of the IGN would undermine the prospects for comprehensive reform of the Security Council. India is of the view that,

"genuine reform in the working methods of the Security Council requires a comprehensive reform of the membership of the Council, with expansion in both permanent and non-permanent categories, not only improvement in its working procedures. This kind of reform is essential both for the credibility and continued confidence of the international community in this institution." (Bishnoi)⁵

The stand on the S-5 proposal is the major point of difference between the two countries.

5. CONCLUSION

India and Australia started off with varying perceptions of permanent membership with veto power for the Great Powers. Both came together to play a pioneering role in devising an alternative mechanism of peacekeeping operations to manage conflicts when the Great Powers failed to live up to the requirements of the collective security system. However, with the intensification of the Cold War, the two countries opted for divergent paths with Australia joining the Western bloc whereas India became the leading voice of the nonaligned countries. The end of the Cold War and collapse of the Soviet Union did not make a difference to the US–Australia relations. In fact, Australia went out of the way to prove itself as more loyal than many of the traditional allies of the US. The Australian government under Howard extended unwavering support to the Bush Administration’s war on terror and actively participated in many of the US-led ‘coalition of willing’ and NATO-led operations to intervene in the internal matters of developing countries on humanitarian grounds.

The developing countries were apprehensive when more unanimity among the P-5 in the post-Cold War phase led to more informal decision-making among them without even the effective participation of the non-permanent members of the Council. They demanded the reform of the Security Council to make it more representative and take their concerns also into consideration in the decision-making process. India was the leading voice of the developing countries, whereas initially Australia was toeing the US line of favoring only limited expansion and supported permanent membership only for Japan and Germany. Just as the US withdrew its support for Germany’s candidature due to its stand on the Iraq operation of 2003, similarly Australia’s statements stopped mentioning Germany as a candidate. Keeping in view the geopolitical factor and situational requirements, in the late 1990s Australia supported Indonesia as a candidate for permanent membership. Also, its aspiration for more frequent elections to the Security Council as middle powers made it support the amendment of Article 23 of the UN Charter to remove the restriction on immediate re-election.

However, when renewed efforts were made to take forward the reform effort after 2005, there was a convergence of views of India and Australia. Just like India, Australia was against the transitional reform proposal of the five facilitators appointed by the President of the General Assembly. Like India, Australia has been in favor of inclusion of both permanent and non-permanent members to the Security Council. Similarly, Australia also favored negotiation on a text rather than endless discussion about reforms. Like India, Australia also favored the IGN forum for negotiation, instead of OEWG.

The only major point of divergence between India and Australia was on the S-5 proposal of reforming the working methods of the Security Council. Australia wholeheartedly supported the S-5 proposal. India has no quarrel with the content of S-5’s proposal and even the G-4 as well as L-69 proposals (to which India is a party) containing provisions on reforming the working

methods. However, India is against pursuing it outside the IGK mechanism and separate from the comprehensive reform demand of the vast majority of the member states. India's apprehension is that pursuing S-5's proposal separately would undermine the prospects for comprehensive reform of the Security Council.

The above analysis shows that initially their stand on the issue diverged due to differences in their historical experiences, ideological convictions, and power alignments. However, Australia's stand in the post-2007 phase is much more convergent with that of India, keeping in view the changed reality of the international situation. Their major point of difference is on the S-5 proposal. Australia's support for S-5 seems to be driven not only by its concern with problems of the working system of the Security Council per se. Its position seems to be motivated by its situational context as a middle power in the changed international relations of the twenty-first century and wanting to be seen in the company of other influential middle and small powers. At this juncture, there are more similarities than divergences between India and Australia's stand on UN Security Council reform.

End Notes

¹P5 refers to the UN Security Council Permanent Members China, France, Russia, the United States of America, and the United Kingdom.

²See the statement in http://foreignminister.gov.au/releases/2004/fa164_04.html, accessed on 26/1/2016.

³Media Release on 3 December 2004 in http://foreignminister.gov.au/releases/2004_fa164_04.html, accessed on 26 January 2016.

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Mega- Regional Trade Agreements and Global Trade Governance:Australia and the Trans Pacific Partnership

K D Kapoor*

Abstract

The global economic order today is underlined by an excess of free trade agreements at bilateral and multilateral levels. As these agreements attempt to create an economic order over and above the WTO regime, the implications on member countries and those that engage in trade and such relations with these member countries at bilateral level needs close analysis. The recently adopted Trans Pacific Partnership (TPP) Agreement marks a major land mark in the global trade governance as it ushers in an era of mega regional trade agreements and a crucial set back to the WTO led global trade governance. In this context, the paper assesses the significance of mega regional free trade agreements, the specialties of the TPP Agreement and the implications of such developments in the Indo-Pacific region.

Key Words: Mega Regional FTAs, Trans Pacific Partnership Agreement, Global trade, Australia and TPP

1. INTRODUCTION

Trans Pacific Partnership (TPP) agreement, the historic and most significant trade and investment agreement in more than two decades, was formally signed in Auckland, New Zealand, among 12 countries on February 04, 2016. Australian Minister of Trade and Investment Andrew Robb signed it for Australia. Earlier the agreement was agreed by these countries on October 06, 2015 at Atlanta, USA.¹ Announcing the conclusion of the agreement on TPP the US Trade Representative David Forman said (Parameswaran 2015),

“We, the trade ministers are pleased to announce that we have successfully concluded the Trans-Pacific Partnership. After more than five years of intensive negotiations, we have an agreement that will support jobs, drive sustainable growth, foster inclusive development and promote innovation across the Asia-Pacific region,”

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The agreement marks a major land mark in the global trade governance as it ushers in an era of mega regional trade agreements and a crucial set back to the WTO led global trade governance. President Barrack Obama, with his fast track negotiating powers, managed to seal this mega regional free trade agreement. It links the US with most Pacific countries including Singapore, Japan, and Australia. TPP is currently the world's biggest free trade agreement, encompasses about 40% of the global economy, a total of \$US 27 trillion, and would affect 800 million people. The TPP has sought to eliminate almost 98 % of the tariff lines amongst the member countries. It is the biggest US trade deal since 1995 (Hull 2015).

The strategic analysts claim that the conclusion of the TPP is a victory for the Obama administration as it is considered the most noted free trade agreement of 21st century and a critical part of the US rebalance to Asia Pacific. Its failure would have dealt a blow to the US Asia policy. "We look forward to engaging with stakeholders on the specific features of this agreement and undergoing the domestic processes to put the agreement in place," Froman said (Parameswaran 2015).

Apart from seeking tariff elimination like most of the regional trading agreements, it aims to establish higher standard for international trade and intends to give a new direction to the global trade governance. It seeks to bring higher labor and environmental standards. The member countries have agreed to follow more stringent Intellectual Property Regime. In addition, it intends to focus greater transparency in the government procurement and open State Owned Enterprises (SOEs) to the bidding by the member countries.

2. WHY MEGA-REGIONAL TRADE AGREEMENTS

The emergence of the mega- regional agreement has been attributed to: the stalemate at the WTO's Doha Development Round; the changed nature of the global production networks and the global supply chain. The rising importance of the global value chain (GVC) and trade in intermediate products is attributed to (i) a perception in the developed countries that WTO based multilateral global trade governance is less useful to meet the changing global economic realities which to the protagonists of mega-regionals can only be met by new set of rules of economic governance which must be evolved at these regional and bilateral free trade agreements, (ii) that the norms evolved and agreed upon in these mega- regionals could subsequently be transplanted in the multilateral trade regime under the WTO irrespective of the fact that these norms would be detrimental to the economic interests of the developing countries to whom the WTO based multilateral trading system is much more beneficial and, (iii) the economic threat perception of the US and EU about the emerging Asian economies, particularly China and India, and the changed global power dynamics with a balance of power shifting in favour of Asia . TPP is considered an economic off shoot of its " Pivot to Asia" or " Rebalancing Asia" strategy and it is perceived to be a sort of hedge against the geo-strategic and geo-economic transformation in favour of Asia; a counter to the emerging Asian regional trade agreements such as ASEAN Economic Community and Regional Comprehensive Economic Partnership; the irrelevance of the WTO led multilateral

trade governance; declining American economy that need to evolve new rules and norms of global economic governance which is not being achieved at the WTO because of the resistance from the developing countries as all legal rules can be frame through a process of consensus.

The US seems to have lost interest in the WTO's Doha round and is reluctant to negotiate, as it is not keen to fulfill its commitments which it had agreed upon in the course of negotiations in 2008. It appears that the US intends to use TPP as a bargain to seek concessions at the WTO and to agree to come to the negotiating table. It may also use TPP as a ploy to bring 21 century issues to the multilateral negotiating table. The developing countries, it is strongly contended, should not fall into this trap and they should desist from agreeing to initiate discussions on the new issues. Any attempt by the US to use TPP provisions as a blue print for WTO negotiations would have extremely divisive consequences for the WTO based multilateral trading system.

TPP can also be considered to be a sort of US strategy to reduce growing dependence of these countries on China. No wonder that US President Obama politically and diplomatically made all out efforts to conclude the agreement even when it had to come down from its stated position on a number issues to accommodate and to bring around other member countries to agree to it. The way Australia negotiated shows the US stakes in the finalization of the agreement (Das 2015). This would have far reaching implications for the trade of these countries and the rest of the world, particularly China and even India.

The objectives of the TPP

The Trans-Pacific Partnership (TPP) primarily seeks liberalization of the trade and investment regime among the member countries. Other intentions include creating and supporting high paying jobs; enhancement of innovation; enhance productivity and competitiveness; raise living standards; reduce poverty; promote transparency and trade and investment; promote good governance; ensure strong labor and environmental protection to facilitate supply chain amongst the member counties. The TPP seeks to achieve economic integration beyond the borders and would cover whole lot of issues such as labor, environment, IPR regulations, open State owned enterprises, social issues to achieve harmonization of norms relating to investment etc. It would also address the 21st century issues such as protection of investors and digital trade and above all removal of tariff and non tariff barriers.² It would better integrate the US into the growing Asia Pacific region and is an important component of the US administration's "rebalancing" strategy in the region.

3. AUSTRALIA AND THE TRANS PACIFIC PARTNERSHIP

The new Australian Prime Minister Malcolm Turnbull, in a statement, said that the agreement, "ushers in a new era of economic growth and opportunity across the fast-growing Asia-Pacific." The deal impacts everything from trade barriers to worker and environmental protections, and perhaps most controversially, intellectual property (Bogie 2015).

According to Andrew Robb, Australian Minister of Trade, the agreement will “promote the expansion and diversification of Australia’s world-class services sector by liberalizing key barriers, providing more transparent and predictable operating conditions and it will capture future services sector reforms” (Robb 2016). This has been discussed in details in a separate section of the article.

The TPP is likely to have implications for the other mega- regional trade agreements such as Regional Comprehensive Economic Partnership (RCEP) and Transatlantic Trade and Investment Partnership (T-TIP) .The US is having problems with the European Union (EU) in relations to Investor State Dispute Settlement (ISDS) and Environmental standards. As far as RCEP is concerned six members of the TPP are also members of the RCEP and China is a dominant member of the RCEP. China is excluded from the TPP but it has free trade agreements with the ASEAN and also is the number one trading partner of Australia. Notably, India is also not a member of this mega- agreement. There are divergent points of view regarding New Delhi’s non membership. Joining it is not likely to yield substantial gains while the cost to be borne could be very heavy. India is not likely to lose much as it has free trade agreements with the ASEAN. It also has a comprehensive economic cooperation partnership agreement with Japan and is at an advanced stage of negotiations for free trade agreement with Australia. India is negotiating for RCEP, which includes ASEAN plus Australia, Japan, South Korea and New Zealand. What is required is that India should try to expedite the conclusion of RCEP and other bilateral free trade agreements with. TPP’s impact on India has been dealt in detail in another study.

Significance of TPP for Global Economy and Australia

The 2014 economic data relating to TPP shows how significant it would be for the global economy and the rules and norms which it would set for the global trade governance. They are as follows: total GDP US\$28,0461 billion; per capita GDP \$34,821; total population 805.4 million; total trade with Australia A\$226 billion; TPP’s percent of the World GDP 36.3%; TPP’s share in the world trade 25.5% and TPP’s percent of the world population 11.2 % (Dept. of Foreign Affairs and Trade 2015).

TPP’s share in the global service trade is about 24 percent and Australia’s service exports to TPP countries stood at US\$20 billion in the year 2014 which was 35% of Australia’s total service exports. Australia’s total two way trade with the TPP countries during the 2014 amounted to \$226 billion which is 34.1 % of all Australian trade of which exports were to the tune of \$109 billion while the imports stood at \$117 billion. With the setting of common rules and norms for international trade and investment doing business with the TPP countries would become much easier (Dept. of Foreign Affairs and Trade 2015).

Australia’s top exports to TPP countries include liquefied Gas \$16.7 billion, coal \$12.8 billion, iron ore and concentrates \$8.4 billion, professional, technical and other business

services \$4.7 billion, personal travel excluding education \$4.6 billion. Australia's top imports from the TPP countries include refined petroleum \$11.8 billion; crude petroleum \$9.6 billion, personal travel excluding education \$9.0 billion, passenger motor vehicle \$8.3 billion and transport services \$6.4 billion. Australia's two way trade with TPP nations is as follows: Japan \$70 billion, New Zealand \$22 billion, Singapore \$21 billion, Malaysia \$18 billion, Vietnam \$9 billion, Canada \$3.4 billion, Mexico \$2.5 billion, Chile \$1.2 billion, Brunei \$1 billion and Peru \$223 million (Glenday 2015).

Total foreign investment of Australia in TPP countries was valued at approximately \$868 billion while the total foreign direct investment from the TPP countries in Australia was valued at approximately \$1.1 trillion which is about 39.1 %. According to government of Australia, the trade and investment relations between Australia and TPP countries has been growing and has doubled in the last decade reaching \$869 billion in 2014 showing a rise of 16 percent from the previous year. TPP's investment in Australia doubled in the last decade and reached \$1.1 trillion in 2014. With a rise of 10 percent over the last year, the share of TPP's investment in Australia constitutes almost 40 percent of all investment in Australia. Australia's 45 % outward investment is towards TPP countries (Robb 2016).

The TPP countries represent about 25.5% of the total world trade valued at US\$12.0 trillion. TPP's share in the world economy was about 36.3% valued at US\$ 28.0 trillion. Its share in the world population stands at 11.2% and is a market of 805 million people (Dept. of Foreign Affairs 2014).

According to the media release of October 6, 2015, by the Australian Minister of Trade and Investment, after agreeing to the TPP at Atlanta, USA, the agreement is expected to deliver enormous economic benefits to Australia "including unprecedented new opportunities in the rapidly growing Asia Pacific region, with its rising middle class, for Australian businesses, farmers, manufacturers and service providers". It would establish a more seamless trade and investment environment across 12 countries which represent around 40 per cent of global GDP". The agreement is considered to be part of government's micro economic strategy of diversification of the economy. The agreement would supplement Australia's existing trade deals with South Korea, Japan and China. The agreement is expected to eliminate barriers to Australian exports to the tune of almost 98 % of all tariffs across covering almost all the items of export interest to Australia such as beef, dairy, wine sugar, rice horticulture and seafood along with manufactured goods and, resources and energy (Robb 2016). Tariff on Australian exports worth \$9 billion to these countries will be eliminated including \$4.3 billion applicable to agricultural goods which include beef, dairy, sugar, rice, grains, and wine. Additionally dutiable exports worth \$2 billion will receive significant preferential access through new quotas ad tariff reductions.

This agreement according to Robb brings enormous promises across both traditional trade and investment and the 21st century areas like e-commerce and increasingly important global

value chains. According to Robb, “the tariff cuts will deliver material gains for our exporters across the board and place downward pressure on the cost of imported goods for households and businesses, but the benefits that will flow from the creation of a more seamless trading environment are not well understood” (Robb 2016).

The TPP is considered to be focusing on paperless trading, streamlining of custom procedures and trading rules, assistance for SME’s, seamless data flow and flexibility in data storage, help stimulate new investment and deepening of trade relations leading to increased investment. An important aspect of the TPP is the setting of common rules for labor and environment, rules to combat bribery and corruption, and ensuring that private companies can compete with SOE’s.

After signing the agreement on February 04, 2016 in New Zealand, the Australian Minister for Trade and investment in a statement said, “TPP will set a new standard for trade and investment in one of the world’s fastest growing and most dynamic regions. We signatories comprise nearly 40 percent of global GDP, a market of more than 800 million people, and around one third of world trade. Our goal is to enhance shared prosperity, create jobs and promote sustainable economic development for all of our nations” (Dept. of Foreign Affairs and Trade 2016).³

However, a World Bank report stated that the developed nations such as Australia are either relatively reliant on things other than trade for economic Growth or are already fairly free of trade restrictions. The report also says that Australia will barely benefit from its membership of the TPP. Its economy would grow by just 0.7 percent by 2030. The US is likely to gain even less and it is expected to boost by 0.4 percent by the year 2030. Vietnam is the only country which would get a boost to its economy by ten percent by 2030, while Malaysia will benefit by eight percent and New Zealand by three percent by the year 2030. The non- members world suffer considerably (Martin 2016). Though the trade between member states will open, the trade with non- members will become difficult because of the process known as “cumulative rules of origin” where members lose privileges if they source inputs from countries outside the TPP (Martin 2016).

Apprehensions within Australia about the TPP

Though Australia has ratified the TPP there was and there is a divided opinion on the usefulness of the TPP, while the government has supported it there are many groups within Australia who are opposed to the TPP and feel that country’s economic interests would be hurt by this deal. The Australian public and interest groups have been highly skeptical of the outcome of the TPP for the country. However, the government tried its best to allay the fears of these sections. In view of the opposition from within the country, the Australian leadership negotiated hard with their counterparts to strike a deal which it could sell to the people on the ground that it would benefit the consumers. It partly succeeded in securing some concessions from the US. Andrew Robb, the

Australian trade Minister claimed that they were dug in on a number of issues critical to Australian economy and asserted that the agreement would lead to boosting of competitiveness, promote growth, create more jobs, and result in higher standards of living for the Australian people (Chang 2015).

Some of the controversial issues on which there was a strong opposition within the country related to Investor State Dispute Settlement (ISDS) and Intellectual Property Rights particularly with regard to the innovation of drugs. The Australian government succeeded in getting their point of view incorporated in the final document of TPP. It is not possible to discuss all the issues agreed upon in TPP. However, some important issues of importance to Australia have been discussed. They include ISDS, IPR, Agriculture sector and Services.

a. Investor State Dispute Settlement

An important point of concern for Australia was the provisions relating to the protection of the investors under the Investor State Dispute Settlement (ISDS) considered to be the most controversial aspect of the TPP. Strong apprehensions were expressed that ISDS would empower Multinational Corporations to bring law suits against the government if the government enacted laws or made policies which would negatively impact the economic interests of the corporation. This was because of the fact that NAFTA had such provisions. Andrew Robb, Australian Trade Minister, assured the Australian people that no legal action will be allowed against the government in case the government changed public policies to ensure the health of people and preservation of environment. It was also assured that no tobacco company would be allowed to take action against the government for its policies against the tobacco industry (Chang 2015).

The concerns were right as Australia was already facing a law suit from a Tobacco company Philip Morris Asia Limited, based in Hong Kong. Its Australia affiliate filed a case against the government on July 06, 2011 against the government's order that all cigarettes be sold in a Green Packet with big health warnings. A bill to this effect was before the Australian Parliament to prevent tobacco companies from displaying their distinct colors, brands design and Logos on cigarettes." Philip Morris Ltd., relied on Australia's 1993 Investment Promotion Agreement with Hong Kong arguing that ban on trademarks breached foreign investment provision of this agreement.

The law provided heavy penalties for retailers as well as companies if they broke the law. A company could be fined A\$1.1million while a retailer could be fined A\$220,000. Philip Morris filed a notice of claim in an Australian court arguing that the legislation violated bilateral investment agreement (treaty between Hong and Australia). Philip Morris said, "Treaty protects companies' property including intellectual property such as trademarks and plain packaging severely diminishes the value of company trade mark". The package was to include, health warnings and full-colour images showing mouth cancer, gangrenous toes and other consequences of smoking would cover

75% of the packs' front, rather than 30% as at present. The pack was supposed to serve stark reminder of the devastating health effects of smoking" (AP 2011).

The law suit continued and went to the arbitration court which held that Australia was within its rights to impose restrictions regarding the packaging of cigarettes and insist on plain packaging. The court upheld Australia's law rights and its world leading tobacco control measures. Philip Morris failed in its long running attempt to challenge plain packaging laws under a bilateral trade agreement. This could give other countries greater confidence to Australia's lead in outlawing tobacco company logo on cigarette packets. The company accepted the tribunal judgment (Hurst 2015).

Australia has succeeded in getting this provision incorporated in the TPP agreement. "The TPP investment chapter provides a modern Investor State Dispute Settlement (ISDS) mechanism which contains safeguards to protect legitimate government regulation in the areas of health and the environment." ⁴ The Minister assured that we will be able to ensure that Tobacco control measures are never open to challenge. Australian government has declared that the investment provisions in the TPP will create opportunities and provide a more predictable and transparent regulatory environment.

Negotiations on the investment were perhaps the most difficult and contentious issue as it involved protecting investors and TPP countries "national sovereignty". The argument being that protection of investor's interest was the key to removing investment barriers, and protecting them from discriminatory treatment. The supporters of investor's point of view and the remedies provided to the investors in ISDS are limited to deregulating the monetary penalties only and cannot require governments to change their law or regulations. However, it was argued by the opponents that companies use ISDS to "restrict governments' ability to regulate in the public interest (such as for environmental or health reasons), leading to "regulatory chilling" even if an ISDS outcome is not in a company's favor." In this case reference was made to Philip Morris case.

b. Pharmaceutical / Biologic Drugs

The most controversial issue has been the IPR provisions with regard to biologics (drugs developed from living cells). The current US provision provides for 12 years of data protection. The US was keen to incorporate this provision into the TPP; however, many countries of the grouping while negotiating opposed these provisions. Vietnam and Australia vehemently opposed it on the ground that such a provision would lead to increased health care cost. The US finally had to accept the demands of the opponents. As per the TPP agreement, biologics data protection will be adhered to by the signatories for at least 5 years. However, the participating countries have the option of increasing this period.⁵

One important point of negotiation between the TPP members was the secrecy of clinical data of innovative drugs, which gives a company exclusive right to produce biological drugs for a period of time. Biologics drug are those drugs which are derived from biological sources, particularly for cancer, produced from the living cells. The US position on these drugs was that a company can have complete control over the data for 12 years after which they could be produced by other companies in the form of generic drugs. The Australian law gave this right to producer of an innovative drug for five years. There were apprehensions within Australia that the US would pressurize countries to keep it at 12 years. However, the Australian negotiators negotiated hard and finally succeed in getting the five year period incorporated in the agreement. Actually big pharma companies wanted their biologic medicines to be protected from cheaper generic drugs competition for a longer period of time so as to reap profits for a longer time.

The TPP recognizes the importance of the new innovative biologic medicines and thus has agreed that data protection of these biologic medicines will be for five years. However, if a member country wants more than this period it can do so. The Australian government succeeded in not letting the US change Australia's existing policy. Australia has not agreed to make any changes in its health system including Pharmaceutical Benefit Scheme (PBS), thus the concerns of the Australian people, NGO's and even that of the government that the drug price will zoom after the TPP now stands allayed (Dept. of Foreign Affairs and Trade 2016).⁶ According to Prime Minister Turnbull, "this deal has no impact on the pharmaceutical scheme. It is not going to make drugs more expensive in Australia whatsoever".

c. Australian Agriculture: The Big Winner

As per the TPP agreement the Australian agricultural sector would be the major beneficiary as it would lead to elimination of 98% tariffs on Australian agricultural exports. Farmers will benefit from elimination or reduction of tariffs on products in agricultural sector such as Dairy, Wine, Sugar, Rice, Horticulture and Seafood.

i. Sugar:

Australia has been very keen to increase its sugar exports to the US and other countries and for the first time in 20 years Australia would have increased access to the US sugar market virtually increasing its entitlement two fold. An additional quota of 65,000 tons has been given to Australia increasing the annual export of sugar to the US from 107,000 to 207,421 tones and as per the long term projections of the USDA the figure could go up to 400,000 tons of sugar to the US by the year 2019-2020. The new access is almost equal to the access given to Brazil, the largest producer of sugar in the world (Vidot 2015).

It was expected that under TPP, Australia would get an increased access to the US for its sugar. The Australian government is supposed to have taken a tough stance on the issue of sugar and virtually conveyed to the Americans that in case there were no concessions on sugar, there

would be no deal. The US seems to have yielded to the Australian pressure and has raised the limit of sugar imports. Actually the Australian farmers have been putting pressure on the government to seek more liberalization of the US sugar market (Hurst 2015a).

A major decision relates to Japan's liberalization of the agriculture sector. As we know agriculture sector is highly protected by the government and Japan has always resisted any attempts at various multilateral or regional negotiations to liberalize its agriculture. Thus, its decision to agree to liberalize its five sacred agricultural commodities, beef, pork, wheat, sugar and rice marks a major departure from its erstwhile policy. Japan will eliminate 74% beef related tariffs. Fresh chilled or frozen beef's tariff will be reduced from 38.5% to 9% in 16 years. Tariff on pork will be cut by half and would be 15% by 2015 and would be completely phased out within 11 years. Tariff on processed wheat products such as biscuits, cookies, uncooked spaghetti and macaroni will also be reduced.

Rice is one of the most protected food grains in Japan and therefore import restriction on it would be modestly loosened. Japan imports 770,000 tons of rice under tariff-free state trading of which the US exported about half at a value of about \$269 million in the year 2014. Japan however, imposes 778% tariff on imports outside the minimum access framework. However, under TPP Japan will immediately set aside a duty free CSQ of 50,000 tons for US eventually rising to 70,000 tons.

Sugar is one item on which both are reluctant to relax tariff restrictions. Neither the US nor Japan agreed for liberalization of sugar imports. The US would establish 86,300 tons quota per year for TPP participants of which Australia will receive 65,000 tons. Japan will reduce tariff on sugar significantly but will allow only 500 tons of duty free imports of raw and refined sugar. Export of Australian sugar to Japan would also be subjected to reduced levy which would add further to the competitive advantage of Japan-Australia Economic Partnership Agreement. There would be elimination of tariff on the export of refined sugar to Canada and raw sugar to Peru. Export of refined sugar to Malaysia too would be liberalized. As far as the US is concerned, most tariffs on the US agricultural exports will be eliminated. More than 50% of the US agricultural exports (by value) will receive duty free treatment.

Apart from sugar the other important items in the agricultural sector which will have increased access to the markets of the other TPP countries include:

ii. Beef:

The TPP agreement liberalizes beef exports to Japan and eliminates tariffs for beef to Mexico, Canada and Peru. Tariff on Australian exports of beef to Japan will be 9 percent. Tariffs on beef into Mexico and Canada will be eliminated within 10 years.

iii. Rice:

Japan is highly protectionist regarding the import of rice. Australia now will be able to export rice to Japan for the first time in 20 years, and this will be facilitated by a new administrative agreement. Mexico will also allow import of rice from Australia with eliminated tariffs.

iv. Dairy:

As part of TPP agreement, Japan will eliminate tariff on a range of cheeses imported from Australia which at present covers existing trade of US\$ 100 million and would be given preferential access for another US\$ 100 million of cheese exports. Butter and skimmed milk powder too would get additional access. Australian exports to Japan of mozzarella for processing use will be duty free when blended with Japanese cheese. Australia will also be able to export 9,000 tons of more cheese to the US. Tariff will also be eliminated on milk powder and Swiss cheese to the US. Australia will also gain new preferential access into Mexico and the highly-protected Canadian market.

With regard to Cereals Mexico will eliminate tariffs on wheat and barley within 10 years and Canada upon TPP's entry into force. Japan has agreed to reduce mark-ups applied to wheat and barley and also have agreed to create a new quota beyond JAEPA. Another item covered under the tariff reduction is wine, Mexico has agreed to eliminate it between 3- 10 years while Peru will do so in 5 years, Canada upon entry into force. Malaysia and Vietnam too have agreed for the first time to eliminate tariff on wine. Canada and Peru have agreed to eliminate tariff on seafood on TPP's entry into force, while Japan and Mexico will do it in 15 years.

d. Australian Service Sector: The Beneficiary

It may be mentioned that the US has been particularly keen on the liberalization of the service sector in these countries as it is a major component of the US economy. It has been a major priority in the negotiations of bilateral and regional free trade agreement and it was the same in case of TPP. Cross border trade of the US constitutes slightly less than one third of total US trade and its interest in this sector flows from its competitiveness in this sector. Some figures are illustrative of it. For instance services account for 78% of US private sector GDP and 87 million private sector employees in 2013 and has consistently maintained trade surplus in this sector which amounted to \$233 billion in 2014 and to some experts it would be of greatest benefit to the US.

Through this agreement, the US has sought to expand its previous commitments which these countries have made with the US particularly with countries with which it does not have existing free trade agreements such as Brunei, Japan, Malaysia, New Zealand and Vietnam and the existing arrangement with these countries are according to the TO General Agreement on Trade in Services (GATS). The agreement also seeks to overcome barriers not covered

or partially covered in previous trade agreements. Some important issues include the prohibition of restriction on data flows and data localization requirement and treatment of electronic payments and cards.

It also has sought to streamline the variations in service trade restrictions in the TPP OECD countries such as Australia, Canada, Chile, Japan Mexico and New Zealand. It is also using this opportunity of liberalization of service trade through TPP negotiations. Look at some of the points agreed in the TPPA relating to trade in services. Japan has agreed to remove any precondition “to provide express delivery and insurance services, “it would also allow competing insurance providers access to the distribution networks of Japan Post, the Japanese postal provider”.

Malaysia has agreed to eliminate capital cap in telecommunications services and all joint ventures” and “performance requirements for 12 service sectors in the upstream oil and gas industry, including drilling services, turbine repair and maintenance, and seismic data acquisition. As far as Vietnam is concerned it has agreed to remove foreign equity restrictions on freight agency, warehousing and custom clearance and eliminate joint venture requirements for freight brokerage and related cargo logistics services.”

According to Andrew Robb, the agreement will “promote the expansion and diversification of Australia’s world-class services sector by liberalizing key barriers, providing more transparent and predictable operating conditions and it will capture future services sector reforms”. Service areas that will benefit from the TPP include Mining Equipment Services and Technologies (METS), professional services such as legal, architectural, engineering and surveying services; financial services, education, telecommunications, IT, transport, health, hospitality and tourism. Australian companies will also have new opportunities to deliver government procurement services (Robb 2016).

The TPP provides a good outcome for a broad range of Australian services including education, professional services, transport, financial services, and access for Australian goods and services exporters to government procurement markets in the region. Australia’s world-class Mining Equipment, Technology and Services (METS) and oilfield services sectors in countries like Vietnam, Malaysia, Mexico, Chile and Peru will also gain strong benefits.

Provision with regard to services include that cross border trade in services will adopt a “negative list” regime, under which parties will not impose barriers unless specifically excluded from a certain sector. This is also true in the case of financial sector. The government also pointed out that the consumer goods would become cheaper due to the elimination of tariffs and the red tape. The beneficiary would be the service sector. It would bring money to the economy, as the foreign companies now would find easier to operate in Australia and the sector which would gain most are legal, accounting, engineering. The Australian engineers would now be able to go to countries like Vietnam etc for taking up these jobs.

This 21st century agreement will address contemporary trade challenges and would stand as a model for many others in the future trade agreements around the world. The TPP's new rules on state-owned enterprises (SOEs) will help Australian businesses to compete on a more equal footing with government-owned commercial enterprises in TPP markets and ensure that SOEs do not unjustifiably discriminate against Australian suppliers of goods and services. With regard to intellectual property, TPP will not require any changes to Australia's patent system and copyright regime (Robb 2016).

The TPP would open opportunities for the world class Australian service providers in various service sectors of the member countries such as Mining Equipment Services and Technologies (METS) and oil field service providers as many of these countries are liberalizing their services sectors. Mexico is moving ahead to liberalize its energy sector. Vietnam is opening its mining investment regime, Brunei Darussalam and Vietnam is reforming its local content regime, and creating a level playing field for the Australian and foreign suppliers providing goods and services in the mining and oil and gas sectors.

Another important dimension emerging out of the TPP is that now Australian goods and service providers would be able to compete with the State Owned Enterprises (SOE's) in these countries according to the new rules relating to SOE's of which some important ones are Petronas of Malaysia, Pemex of Mexico, Vinacomin of Vietnam, and Petro Vietnam.

Most of the member countries have agreed to open their service sector to the Australian professionals, financial services, educational services ,temporary entry of business persons, services, telecommunication services, transport , health services, Hospitality and tourism and government procurement.⁷⁷

The other service which these countries have agreed to open include legal, architectural engineering, surveying services, investment and advice and portfolio management , insurance of risk related to maritime shipping ,international commercial aviation, and brokerage ,Universities and vocational education providers have been guaranteed access to a number of existing and growth markets, Australian freight and logistics providers to benefit from enhanced commitments.

e. E- Commerce

Australia is also quite happy with provisions relating to e-commerce as it will promote more liberal cross border environment for flow and storage of data along with appropriate consumer protection with government having the right to regulate it in public interest said the Minister. It will ensure easy access to the small and medium sized enterprises to global value chains. Moving to paperless trading and making consumer delivery more effective and efficient with user friendly websites targeted at SME's.

f. Australian Resources and Energy Products and TPP

Australian economy is mainly based on resources and energy products exports. In 2014 its resources and energy exports to TPP accounted for \$47 billion which constituted almost 30 percent of its total exports. As per the TPP agreement exports of iron ore, copper, and nickel to Peru will be eliminated. Tariff on exports of **butanes, propane and liquefied natural gas** to Vietnam will be eliminated within seven years. Vietnam has also agreed to eliminate tariff on automotive parts over ten years. Australia exported these items to the tune of \$9 million in 2014. Vietnam will also eliminate 20 percent tariff on refined petroleum, Australia exported refined petroleum worth \$11 million in 2014.

g. Manufactured Goods

Another area which was to benefit from the TPP was the export of manufactured goods to the TPP countries. Australian exports of manufactured goods to these TPP countries in 2014 accounted for \$27 billion. Canada and Vietnam has agreed to eliminate tariffs on iron and steel products within 10 years. Canada has also agreed to eliminate tariff on ships within 5 to 10 years. Mexico also has agreed to eliminate tariff on Pharmaceutical, machinery, mechanical and electrical appliances and automotive parts within next 10 years. Peru has also agreed to eliminate tariff on a number of goods such as Pharmaceuticals, paper and paper board over the next 10 years.

As per TPP agreement relating to government procurement, Australia will now be able to bid for tenders to supply goods such as drugs, pharmaceuticals products, electronic components and supplies used for the government purposes in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam. As far as the US is concerned most tariffs on the US agricultural exports will be eliminated. More than 50% of the US agricultural exports (by value) will receive duty free treatment. About 18,000 tariff lines on the US made goods will be cut. Tariff on Industrial goods will be phased out immediately. Duties on textiles and apparels will be eliminated but on some sensitive goods, it will be eliminated over a period of time. Current US tariffs on light vehicles and trucks automobile would remain at 2.5% and 20% respectively for 25 and 30 years respectively.

Malaysia and Vietnam have agreed to eliminate tariffs on automobiles to the tune of 30% and 70% respectively. To be eligible for reduced tariff in TPP the participant country must contribute at least 45% local content in the components and parts. It may be mentioned that in NAFTA this ceiling stands at 62.5%. In Canada dairy products are highly protected. Both the US and New Zealand has been pressurizing Canada to open its dairy products market. However, only 3.3% of dairy products will be available for tariff relief under the TPP (Robb 2016).

h. Investment Opportunities for Australia

The liberalization of the investment regime in the TPP countries would open new investment opportunities to the Australian investors because of predictable and more transparent investment environment providing them an opportunity to diversify their investments because of liberalization of important sectors such as telecommunication, and financial services. The liberalization of the investment screening regime too would be beneficial to the Australians, for example now the investment below Can.\$1.5 billion will not be subject to screening.

With the increase in the screening threshold limit of private foreign investments in non-sensitive sectors from \$252 million to \$1,094 million to be considered by Foreign Investment Review Board of all the TPP countries would help the Australian investors to diversify their investments. In the realm of allowing investment in Australia it has retained an autonomy of and screening investment in sensitive sectors. It would also ensure that the foreign investors did not raise issues contrary to national interests. Foreign investments in agriculture and agribusiness will be examined and screened at the lower threshold.

Australia appreciated the TPP's inclusion of requirement of higher environmental and labor standards in the TPP countries requiring them to combat wildlife trafficking and legal and illegal fishing as well as reducing subsidies that causes depletion of global environment (Robb 2015).

4. CONCLUSION

During the course of negotiations, Australia was fully conscious of the opposition to the TPP from within the country, particularly the citizen groups. The government negotiated hard on some of the important issues of concern to the people such as ISDS and IPR. It succeeded in getting the concessions from the US with regard to ISDS and Biologics. It gained significantly in the Agriculture sector. However, the World Bank's estimates indicate that its contribution to Australia's overall economic growth may not be substantial. The TPP as such marks major development in the arena of global trade governance as the range of the issues agreed upon is very extensive and this probably would be disincentive for the US to come to the WTO's negotiating table. There is no doubt the TPP goes a long way in undermining the WTO based multilateral trading regime in which the developing countries have the highest stakes.

End Notes

¹The members of TPP are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States of America

²The issues covered are: National treatment and Market Access; Rules of Origin and Procedures; Textile and Apparels; Customs, Administration and Trade Facilitation; Trade Remedies; Sanitary

and Phyto-Sanitary Measures; Technical Barriers; to Trade; Investment; Cross Border Trade in Services; Financial Services ;Temporary Entry for Business Persons; Telecommunication; Electronic Commerce ;Government Procurement; Competition Policy; State Owned Enterprises; Intellectual Property; Labor; Environment; Cooperating and Capacity Building; Development; Small and Medium Sized Businesses; Transparency and Anti-Corruption; Administrative and Institutional Provisions; Dispute Settlement; Exceptions ;and Final Provisions(In all 30 issues)

³ Ms Elizabeth Ward, First Assistant Secretary, Office of Trade Negotiations and TPP Chief Negotiator, Department of Foreign Affairs and Trade, and representatives of other Australian government agencies appeared before the Joint Standing Committee on Treaties Inquiry into the Trans-Pacific Partnership Agreement.

⁴ The provision relating investment says, “Parties set out rules requiring non- discriminatory investment policies and protection that assure basic rule of law protection while protecting the ability of Parties Government to achieve legitimate public policy objectives”, Australian Government ,Departmental Foreign Affairs and Trade , Trans Pacific Partnership Agreement , Summary of TPP Agreement , TPP Parties adopt a “negative-list” basis, meaning that their markets are fully open to foreign investors, except where they have taken an exception (non-conforming measure) in one of two country-specific annexes: (1) current measures on which a Party accepts an obligation not to make its measures more restrictive in the future and to bind any future liberalization, and (2) measures and policies on which a Party retains full discretion in the future”. It also provided for “neutral and and transparent international arbitration of investment disputes, with strong safeguards to prevent abusive and frivolous claims and ensure the right of governments to regulate in the public interest, including on health, safety, and environmental protection. The procedural safeguards include: transparent arbitral proceedings, *amicus curiae* submissions, non-disputing Party submissions; expedited review of frivolous claims and possible award of attorneys’ fees; review procedure for an interim award; binding joint interpretations by TPP Parties; time limits on bringing a claim; and rules to prevent a claimant pursuing the same claim in parallel proceedings” Australian Government ,Departmental Foreign Affairs and Trade , Trans Pacific Partnership Agreement , Summary of TPP Agreement , <http://dfat.gov.au/trade/agreements/tpp/outcomes-documents/Pages/summary-of-the-tpp-agreement.aspx>

⁵ Biologics- Requirements for biologics are a data exclusivity period of eight years or, alternatively, five years coupled with “other measures... to deliver a comparable outcome in the market.

⁶ “Pharmaceutical-related provisions that facilitate both the development of innovative, life-saving medicines and the availability of generic medicines, taking into account the time that various Parties may need to meet these standards. The chapter includes commitments relating to the protection of undisclosed test and other data submitted to obtain marketing approval of a new pharmaceutical or agricultural chemicals product” “,Department of Foreign Affairs and Trade (2015).

⁷ The Australian tour operators will be given guaranteed access in Brunei Darussalam, Canada, Chile, Japan, Mexico and Peru. The Australasian companies will be able to participate in the bidding of opened up government procurement in service sectors such as auditing and taxation services in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam. The area which would open opportunities to the Australian is the opening up of the computer and related services as well as the maintenance of office stationary in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam. The opening of the land and water transport services in Brunei Darussalam, Malaysia and Peru would benefit the Australian transport service provider.. Telecommunication and related services has been opened up in Brunei Darussalam, Canada, Malaysia and Peru to the Australian businesses in this sector.. The phasing out foreign equity limit in Vietnam would benefit the Australian telecommunication providers after five years of entry into force of TPP. There is wide scope for the Australian environmental protection industry as Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam has agreed to open the environmental protection service sector. Brunei Darussalam, Canada, Japan, Malaysia, Mexico and Peru would open opportunities to the education providers of Australia..The liberalization of health and Social Services in Brunei Darussalam, Malaysia and Peru would open new opportunities to the Australian service providers in this sector The Australian health and allied services providers would also benefit from greater certainty regarding access and operating conditions in Malaysia, Mexico, and Vietnam.

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Free Trade Agreements and Access to Affordable Medicines: Is Trans Pacific Partnership a bane to Indo-Australian Relations?

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Abstract

The past decade has witnessed the execution of multiple bilateral and regional free trade agreements. Introduction of various TRIPS-plus standards into these agreements have emerged to be detrimental to the implementation of the flexibilities granted by the TRIPS Agreement and, hence, debilitated the access to affordable medicines for many countries. India has always been wary of such agreements and the recently concluded Trans Pacific Partnership has sparked debates on its implications on our access and exports of medicines. This paper proposes to study the nature and scope of impact of free trade agreements in the realm of health, peculiarities of the Trans Pacific Partnership and, finally, the reflections of the scenario on Indo-Australian relations.

Key Words: TRIPS, Free Trade Agreements (FTA), Access to Medicines, TRIPS-Plus standards, India, generic medicines, Trans Pacific Partnership, Australia

1. INTRODUCTION

The Agreement on Trade Related Intellectual Property Rights (TRIPS), adopted under the aegis of the World Trade Organisation, has been exhibiting a multifaceted impact on the countries of the world in unparalleled intensities on various socio-economic realms of development, including health and access to affordable medicines. The compulsion to supplant the 'generic friendly' process patent regime with the product patent for a universal 20 year term, is severely crippling the generic drug sector and countries like India that depend heavily on import/export of generic medicines have been raising their voice against the TRIPS regime. The subsequent development of much significance has been the Doha Declaration on TRIPS Agreement and Public Health, 2001, which exposed the possible potentials of flexibilities in TRIPS. Just as developing countries were learning the nuances of the flexibilities and make appropriate use of them, the international arena began to witness the drafting and signing of many bilateral and regional free trade agreements with provisions that are referred to as TRIPS-plus provisions. While some of the implications are so clearly visible, others are yet to be experienced. But, it is undoubtedly evident that the TRIPS-Plus standards are not intended to favour access to affordable medicines and hence, developing countries like India has no option but to be wary of these regulations as well as the countries that opt for such regulations.

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The paper proposes to discuss the nature and scope of the TRIPS-plus provisions in free trade agreements and the implications on the generic drug industry as well as access to affordable medicines. Then, a review of the impact of this new global TRIPS-based IPR regime on India and Australia, in particular, will be conducted. Further, the paper shall look into the Trans Pacific Partnership (TPP) to understand the realities in the apprehensions amongst the developing countries regarding the effects on generic drug exports. Finally, the study aims to explore the impact of the TPP on Indo-Australian relations.

2. TRIPS TO TRIPS- PLUS AND FREE TRADE AGREEMENTS

The TRIPS Agreement is distinguished, from the General Agreement on Trade and Tariff (GATT) and all hitherto international and domestic intellectual property regulations, by the introduction of various provisions with the objective of reducing distortions and impediments in international trade and more importantly, to promote effective and adequate protection of intellectual property rights. The Agreement expanded and consolidated all intellectual property into the ambit of seven categories, namely, copyright and related rights, trademarks, geographical indicators, industrial designs, patents, layout designs of integrated circuits, and protection of undisclosed information. With respect to patents, the distinguishing features of the Agreement include national treatment and most favoured nation treatment, exhaustion of rights, reversal of burden of proof, exclusive marketing rights, enforcement mechanism within TRIPS and dispute settlement arrangements under the WTO, product patent regime, redefining and expanding the scope of patentability, 20 year term for all patentable subject matter etc (WTO 2006).

The TRIPS Agreement ushers into the system of global trading rules an extensive mechanism for policing the high IPR standards in all WTO member states aimed at facilitating an investment-friendly environment. The implementation of the TRIPS Agreement is mandatory for all WTO members and the process has caused significant institutional and financial challenges to many developing countries. While the relevance and necessity of the inclusion of the provisions of intellectual property protection into the ambit of trade regulations was questioned by most developing countries, the persistence of the United States of America and other developed countries outlasted all (May 2000). The developing countries were wary about the inappropriateness of most of the provisions with respect to their socio-economic and technological needs, yet the developed countries were highly vociferous of the benefits to research and development, foreign direct investment as well as technology transfer. The more prominent arguments for the inclusion were the alarming scale of trade in counterfeit products, increasing international disputes over intellectual property owing to difference in levels of protection in competing countries and most importantly, the increasingly speedy shift of the international trade arena into the realm of knowledge economy (Reichman 1993).

The other set of arguments in favour of the TRIPS Agreement are that the protection of pharmaceuticals by patents should lead to an increase in the flow of technology transfer and foreign direct investment to the benefit of developing countries, thereby improving dissemination of knowhow at the global level. The new universal IPR regime assuring stringent patent protection is expected to encourage local pharmaceutical companies to focus on R&D of new drugs suited to domestic needs. This scenario was proposed to limit the issue of 'brain drain' from developing countries due to lack of so called opportunity to innovate (Attaran 2004).

The new IPR regime, especially, the provisions related to patents are possibly the most contentious topic wherein the developing countries argue severe discrimination. The product patent system, along with the expansion of the scope of patentable subject matter to pharmaceutical products, inclusion of biodiversity and the possibilities of applying trademark and trade secret regulations on product data have all been detrimental to the protection and promotion of public health and access to affordable medicines. At this point one must make it clear that the multilateral trading forum of WTO is having discerning impact on access to affordable medicines and, thereby, on the poor of the world. Specifically, public health is affected by the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Technical Barriers to Trade, the GATS Agreement and the TRIPS Agreement. These agreements affect food safety; production, labeling, packaging and quality standards of pharmaceuticals, biological agents and foodstuffs; movement of consumers and providers across borders to receive and supply health care, FDI in health, e-commerce etc. (Baker & Avafia 2011).

The polity has always been keen on understanding the status of the health of the population and public health has roots in antiquity. All human rights discourses ascertain right to health as a necessity. Right to health may be defined by WHO as "the highest attainable standard of physical and mental health, reproductive and sexual health and advocates, along with its other determinants, equal access to adequate health care and health-related services, regardless of sex, race or other status". The right to health might not be depicted *de jure* in some constitutions, but access to health could still be considered *de facto* as a right (Cullet 2003). Since, it is not possible to implement direct measures to guarantee an individual's right to health the State needs to pay special attention to ensure mechanisms to access to affordable essential medicines. Essential medicines are those that satisfy the priority health-care needs of the population and are selected on the basis of factors like disease prevalence, evidence of efficacy, comparative cost and safety effectiveness (Hogerzeil 2006). Today, one third, and at some places one half of the world's population are unable to procure essential medicines at affordable prices. A relief to the circumstance is the initiatives of Brazil, Argentina, China, India, Korea and Mexico which could establish a substantially good generic drug manufacturing capability and become life-savers, providing almost 90% of the essential medicines. India, 'pharmacy of the world', has been in the forefront in reverse engineering, researching, manufacturing and exporting a wide range of essential medicines, made possible as a result of a combination of its national policies (MSF 2014).

Continuing the strategy of further and deeper inclusion of patent rights into the framework of trade regulations, the new line of tactics being employed by the developed countries is referred to as TRIPS plus standards. Generally the TRIPS-Plus standards imply continued unilateral/multilateral political and trade pressures. More precisely, it can be defined as a “concept which refers to the adoption of multilateral, plurilateral, regional and national IP rules and practices which have the effect of reducing the ability of developing countries to protect the public interest” (Said 2010).

One of the most popular tool of this third wave of strategy to arrest the generic sector is the incorporation of intellectual property rights provisions in any and all Free Trade Agreements (FTA). The FTAs have clauses on intellectual property that are more stringent and in excess of the minimum standards established by the TRIPS Agreement, hence the terminology, ‘TRIPS-Plus.’ They are intended to transfer TRIPS-plus obligations into the national legislations of developing countries in lieu of concessions in core trade areas such as agriculture and other market access preferences. Article XXIV of GATT, Article V of GATS and the Enabling Clause of WTO allow FTAs. Such agreements have clauses that demand waiver of the exception granted by WTO to least developing countries under the transition arrangement; restrict patent oppositions; enhance enforcement mechanisms; compel accession to many WIPO treaties; forceful extension of national patent terms to compensate for delays in the examination of a patent application or in obtaining marketing approval for a drug; link drug regulatory systems to patent systems; deny marketing approval of generic drugs; permit ‘evergreening’, ‘me too’ and ‘copycat’ drugs; and tamper the period of exclusivity for test data (Geethika 2014).

The Free Trade Agreements of the 21st century are international policy instruments aimed at shaping new macro-economic and political systems. Triggered by the 2008 global financial crisis, there has been a surge in the number of FTAs, and from mere 22 bilateral and regional agreements in 1990, today in 2016 there are over 270 FTAs. They are not only intended to lower tariffs and promote smooth flow of capital, goods and services, but has been upgraded into a tool of immense economic and social implications for signatory countries and the entire economic region. These agreements represent a new international context with the potential to disrupt overall conditions of pricing, wages and trade flow across borders. The FTAs are drafted to facilitate opening up of new markets for goods, create jobs, save money for corporations and minimize tariff and non-tariff barriers (ITA 2015).

The TRIPS-plus provisions include: broadening patentability, restricting patent opposition, extending patent duration, introducing test data exclusivity and patent registration linkage, as well as expand enforcement requirements. The United States of America, European Union and Japan have shown much enthusiasm in infiltrating IPR into FTAs. It is criticised that the US is very keen in adding provisions on intellectual property in every trade agreement. Since 2001, USA has initiated eleven bilateral and regional free trade agreements with 23 countries (Geethika 2014).

Some of the most controversial FTAs are:

- North American Free Trade Agreement (NAFTA)
- The EU- India FTA, also called Broad-based Trade and Investment Agreement (BTIA)
- Canada-EU Comprehensive Economic and Trade Agreement (CETA),
- Transatlantic Trade and Investment Partnership (TTIP) between EU and the US,
- Trans Pacific Partnership Agreement (TPP) between twelve countries of the Pacific region including Australia, Canada, Japan and the US
- Regional Comprehensive Economic Partnership (RCEP)

3. INDIA, AUSTRALIA AND THE NEW GLOBAL IPR REGIME

India

Focusing our observations on the scenario in India will reveal that, since 1995, the Indian Patents Act 1970 was amended thrice and subsequently, the public health sector has undergone tremendous ordeals. Indian pharmaceutical industry was dominated by generic drug manufacture and exports, and India was reigning as the 'pharmacy of the world' due to its high level of export of essential and affordable medicines to many developing and developed countries across the world. The new product patent regime has severely affected this sector. At one end, the pharmaceutical industry has witnessed a surge of mergers and acquisitions, massacring small-scale companies. As anticipated by the advocates of the new IPR regime, there has been a shift towards R&D, but alarmingly, the focus is on chronic lifestyle diseases and other high-profit/market friendly diseases, with only 13% patent applications so far for drugs to treat common diseases (Ekbal 2013). The sector has been surviving owing to the relaxations granted under transition arrangements and other flexibilities.

The Doha Declaration on the TRIPS Agreement and Public Health, 2001, recognizes the concerns of the developing countries. A key element of the Declaration is contained in its Paragraph 4, which states that (Geethika 2014):

We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be

interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.

The flexibilities include, transition period, parallel importation, compulsory licensing, public non-commercial use of patents, exemptions from patentability, limits on data protection, use of competition law, exceptions to patent rights, implementation of the August Decision of 2003, post-grant flexibility. Indian pharmaceutical companies have keenly tried to cash in on the opportunities and attempted to apply some of the aforesaid flexibilities in continuing the supply of essential medicines to the world and within the country. Further, India has also tried to accelerate the introduction of generics into the market by allowing third party testing, manufacturing and export for purposes of meeting regulatory approval requirements and by not extending patent terms on the basis of regulatory delays in registration of medicines; and allowing regulatory agencies to rely on test data provided by the originator of the product to register generics. There are other flexibilities like pre and post grant oppositions, strict disclosure standards, articles 27.3a and 30 (Musungu & Oh 2005). India has also been a pioneer in rejecting the grant of patents (Glivec of Novartis) for new uses of known substances and for other pharmaceutical products that do not entail a significant increase in therapeutic efficacy, by applying its exclusionary provision under section 3 (d) of the Patents Act (Nair, Fernandes & Nair 2014).

While India has been persistently devising new tactics to protect its public health interests vis-à-vis international intellectual property and trade compulsions, most developing countries have not been able to properly understand and implement the flexibilities. More importantly, the developed countries have also been pursuing other means to suppress the use of such flexibilities by luring the poor countries employing promises of trade concessions (increased market access, quotas and lowered tariffs), technical assistance, and increased foreign aid (Geethika 2014).

Australia

On the other hand, Australia has been taking its own course in dealing with the new global IPR regime. One of the earliest bilateral FTA with intellectual property provisions was the Australia-United States Free Trade Agreement ('AUSFTA'), 2004. Since then, Australia has signed 10 FTAs at bilateral and regional level, including the TPP. Most of these FTAs have intellectual property provisions and has direct impact on free flow of affordable medicines across countries. Though Australian public health sector is not severely affected by the TRIPS-plus regime, it is aware of the implications on other countries and in the recent past Australia has taken a softer approach on the concern.

In 2011, Innovation Minister Senator Kim Carr announced the introduction of regulations permitting Australian courts to grant compulsory licenses to manufacture and export patented medicines to needy countries. The government appeared to take a balanced standpoint by supporting and encouraging innovation, investment and international competitiveness by promising patent

owners adequate compensation for any loss due to compulsory licensing (Carr 2011). Surprisingly though, the Intellectual Property Laws Amendment (TRIPS Protocol Implementation) Bill, was introduced only in 2014 and the Act deviates heavily from the original TRIPS Protocol of 2007 (TimeBase 2015).

4. FREE TRADE AGREEMENTS AND PUBLIC HEALTH IMPLICATIONS

The dilemma faced by developing countries today is the reality that the FTAs are challenging all international efforts of the developing countries and organizations in making equitable health accessibility around the globe. The agreements are adversely affecting food systems and consumption; access to medicines, health and well being; and environment of developing and poor countries. The negative externalities with regard to energy consumption and pollutant emissions would end up in the transfer of health risks across nations (Geethika 2014).

Some of these agreements have clauses that extend monopolies of pharmaceutical companies on new medications, enhance investor protections and dispute settlement procedures that empowers foreign companies to challenge national laws in any privately run international court, alter public procurement rules and restrict the export of generic medicines, disrupt and manipulate the food systems of poor countries through oversupply of nutrient-poor processed foods leading to fall in nutritional levels and rise in lifestyle diseases, facilitate the spread of tobacco and alcohol use by forcing withdrawal of public health programmes (UNITAID 2014).

The FTAs initiated by the US are the most eager to introduce TRIPS-Plus standards. The standards include extension of the scope and length of data protection (the CAFTA-Dominican Republic FTA includes a waiting period of five years in addition to the period of data exclusivity), introduction of a 'linkage' between drug registration and patent protection, and extension of patent term for offsetting the time taken for patent examination or securing marketing approval. Some of the countries have already begun to experience the consequences of the TRIPS-Plus standards which were set up by FTAs with the US. Columbia, for example, is forced to pay an additional \$940 million per year by 2020 to cover the increased cost of medicines, affecting nearly 6 million patients; Peru is facing price rise to the intensity of 100% in 10 years and 162% in 18 years; the US-Thailand FTA severely restricts compulsory licensing affecting the price and supply of 2nd line ARVs. The US FTAs, unlike the TRIPS Agreement, require a linkage between drug registration and patent protection, making the national health authority refuse marketing approval to a generic version of a patented product (Said 2010).

On the other hand, the FTAs between the US and developed countries like Australia, Jordan and Singapore limit the grounds for compulsory licenses to cases of anticompetitive practices, public non-commercial use, national emergency or other circumstances of extreme urgency. The FTAs also limit parallel importing of medicines and compel the recognition of

patents over the 'second indication' of a pharmaceutical product expanding the scope of patentability (Correa 2006).

India

India, being the 'pharmacy of the world', contributing a large volume of the exports in essential and affordable generic medicines, has had a few unfavourable experiences internationally due to these FTAs. The eagerness of the EU to infuse trade barriers on Indian generic medicines during transit led to two incidents of drug seizure. The 2007, 2008 and 2015 incidents of rejection and seizure by the European Commission of over 700 generic drugs from India during transit by using certain transit regulations regarding counterfeit products has been a very detrimental case for India. Such cases of drug seizure and ban of drugs at ports can easily be understood as veiled protectionism (Samuel 2015). At the other end, the importing countries are under compulsion from bilateral FTAs to make drastic changes in the sanitary and pharmaceutical regulations, and Indian generic companies are suddenly caught unaware when their export cargo is rejected on accounts of counterfeiting and quality deficits. The transaction cost is also increased because of such restrictive regulations (Geethika 2014).

5. TRANS PACIFIC PARTNERSHIP AND ITS IMPACT ON ACCESS TO MEDICINES

The Trans Pacific Partnership is a broad regional FTA which originated in 2005 between Chile, New Zealand and Singapore, Brunei and Darussalam under the name 'Trans-Pacific Strategic Economic Partnership Agreement (P4)'. After almost 19 formal rounds of negotiations and the addition of the other negotiating partners, the TPP Agreement was drafted in 2015 and signed on 4 February 2016. The other member countries are Australia, Malaysia, Peru, United States of America, Vietnam, Canada, Japan and Mexico. The TPP is geographically inclusive and extends to ASEAN and NAFTA countries. For the beginning of the drafting of the Agreement, it has been under controversy for the secrecy of the negotiations and for the TRIPS-plus content of the text (Ramachandran 2013).

The TPP is different from existing FTAs since it includes aspects such as comprehensive market access, competition policy, regional approach to standards for labour and employment, trade in services, intellectual property rights, regulatory symmetry, technical barriers to trade etc. Upon implementation, the TPP will propel a change in the global trade architecture towards high standards in markets covering one third of world trade and two-fifths of world GDP (Kapczynski 2015).

The provisions related to investment, financing and reimbursement of medicines are not in favour of access to medicines and, therefore, protection of public health in general (UNITAID 2014). Some of the contending contents of the TPP are (Baker 2016):

- Provisions in the TPP impact access to affordable medicines in a negative manner

- Intellectual Property chapter contains provisions that expand the monopolistic nature (scope) of patents.
- Enforcement provisions are equally contentious since injunctions inhibit sale of medicines, allow exercise of increased penalties for damages and expands the scope of subject matter confiscated at borders.
- TPP also holds a distinct IP related investor-state dispute settlement regulation giving powers to IP right holders to demand damage claims from foreign governments (unrestricted IP investor damage claims)
- Pharmaceutical companies also get more access to government decisions listing medicines and medical devices for reimbursement as per the transparency chapter

The US has been keen on incorporating a chapter on intellectual property in the TPP. The clauses are of much higher intensity and gravity than those in earlier FTAs. It includes dilution of even TRIPS standards, like lowering the levels of disclosure and patentability, no pre-grant opposition proceedings, and multiple opportunities to amend patent applications. These changes will, undoubtedly, lead to an outbreak of 'poor quality' patents on medicines and medical technologies. By allowing patentability on new uses, forms and methods, the patentability standards are conflicting with that in India and will encourage 'evergreening'¹, adversely affecting the prospects of genuine R&D as well as scope of operation of generic companies (UNITAID 2014).

The TPP also proposes grant of patents on plants and animals, surgical and diagnostic methods which have all been excluded in TRIPS Agreement. Also, applying the TRIPS flexibilities, as highlighted by the Doha Declaration, countries had imposed higher standards of disclosure to help domestic manufacturing and research. Weakening the disclosure standards lowers the conditions related to disclosing the best mode of working a patented invention. Inevitably, this leads to a scenario where even after the patent expires, the generic companies will fail to recreate or reverse engineer the medicine, which is directly detrimental for ensuring universal accessibility of affordable medicines. Moreover, the situation also works to the advantage of the big companies as they can easily re-introduce the drug in the market through an inferior or different method of invention (Kapczynski 2015).

Another flexibility that is being tampered with is pre-grant opposition. India has successfully used the flexibility to reject and restrict the patenting of medicines of chronic diseases. In 2005, organisations like Alternative Law Forum, Lawyers Collective and the Cancer Patients Aid Association filed a pre-grant opposition (Writ petition no.24759 of 2006 in the Madras High Court) against Novartis' patent application on *Glivec*. Section 3(d) was invoked contending that *imatinib mesylate* was only a modification of an already existing drug and granting of patent to *Glivec* was plain violation of the health rights of the patients (Geethika 2014a). The TPP proposes

to remove pre-grant opposition from national legislation of member countries, thus eliminating a crucial health safeguard in patent laws.

Yet another proposition detrimental to generic drug manufacturers is the disregard for the Bolar exception¹. The proposal discourages the use of the Bolar provision for marketing approval in other countries, forcing generic companies to manufacture the drug locally. Further, such a variation in the regulation would necessitate issue of compulsory license for import and export even for regulatory approval for each medicine (UITAID 2014).

The data exclusivity provision proposed by the TPP is not only TRIPS-plus but also in excess of previous FTAs. In order to obtain marketing approval for generic versions of medicines already on the market, the generic company will be forced to conduct own clinical trials instead of simply proving the 'bio-equivalence' of their drug. Since clinical trials are time and capital intensive, the generic companies will be left with no option but to wait until a specified exclusivity period expires. Data exclusivity interferes with implementation of compulsory license and is, undoubtedly, detrimental for developing countries, especially India. Adoption of the patent linkage system further cripples the developing countries as it allows patent holders the advantage to use health and regulatory mechanisms to get injunctions on generic versions (Nataraj 2016). Having experienced delay in generic entry due to patent linkage, the United Nations Special Rapporteur on the Right to Health warns developing countries against adopting the system.

The TPP is also tampering with trademark provisions with implications for access to medicines. TPP may compel member countries to provide trademark protection to colours, in addition to sounds, scent and other non-visual marks. This would not only create undue confusion in the market, but also would allow seizure of generic medicines subject to trademark disputes. In addition, materials and implements used for generic manufacture—which could include machines, active pharmaceutical ingredients, packaging etc.—could also be seized. The border measures for the import, export and transit of trademarks is being expanded to 'confusingly similar' trademarks, which will lead to a scenario of easy seizure generic medicines, which India dreads the most (Baker 2016).

The TPP is in contradiction to the shocking reality that many UN agencies, International NGOs, United Kingdom's Commission on Intellectual Property Rights, WHO's Commission on Intellectual Property, Innovation and Public Health, and various governmental studies have recommended higher standards of patentability in lieu of the adverse impact of patent regulations on public health.

6. INDO-AUSTRALIAN RELATIONS AND TPP

The biggest concern for India is with respect to its export of generic medicines. It is the fifth largest export item for India. The experiences with European Union regarding seizure and

rejection of generic drugs have made India vary of the TPP also. India exports half of its total production of pharmaceuticals. Over 50% of its global export of drugs is to western markets and the export in generic drugs constitutes 20% of global export volume in the sector. The figures are also encouraging. Indian companies provide 30% of the US's generic drug needs; second in line is the UK, followed by Australia, Germany, France, Netherlands, Belgium and Canada. Western NGOs as well as foundations such as the Bill and Melinda Gates Foundation; Doctors without Borders and the Clinton Foundation buy Indian generics for use in their healthcare work in Africa (Patnaik 2010).

India and Australia go a long way back in trade and bilateral relations, dating back to even the times before British colonial rule. Both are members of the Commonwealth of Nations. The two countries share strong democratic heritage, economic, educational, commerce, security, lingual and sporting ties. The Indo- Australian relation is most significant in three fronts- education, military and trade. Australia is the favourite destination of Indian youth for educational purposes. The Joint Declaration on Security Cooperation, 2009 has further deepened the defense relationship between the two countries, beyond many joint naval exercises. The bilateral trade is flourishing and as of 2016, it is totaled at A\$21.9 billion. Australia exports coal, vegetables and gold, and India exports refined petroleum, medicines and business services, mostly. India exports US\$233 million worth of pharmaceutical products to Australia.

In this subject, forgotten by the world is a unique treaty between India and Australia- "Agreement Between the Government of India and the Government of Commonwealth of Australia with respect to the Mutual Protection of Priority of Patents for Inventions" also known as "Agreement on Protection of Patents", adopted in 1963. Notably, while India and Australia have entered into a number of treaties, the only free trade agreement in the agenda is the Indo-Australia Comprehensive Economic Cooperation Agreement, the discussions of which were launched in 2011. Since it is still inconclusive, under such a circumstance, the TPP is sure to have a dramatic impact on the relation between the two countries.

The Australian Trade Minister Andrew Robb assured that under the TPP, in spite of the ISDS, no legal actions would be initiated against changes in public policy of member countries in the areas of health or environment. This is a clear diversion in the nature of FTA from what happened after the NAFTA was signed. While this is a matter of relief for generic companies, the intervention by the minister that TPP will also provide exclusive rights for five to eight years to innovators of new drugs (biologics³³) is disturbing. Minister Robb calls this "two roads, two systems leading to one outcome", but many experts in intellectual property law express skepticism about this proposition, since, the US has a history of thrusting lot of unexpected clauses into such deals at the final moment (Chang 2015). The matter at stake here is the political will of Australia, but when Australia believes that the TPP would boost their agriculture, services, energy and manufacturing sectors, the question is whether the government will be too concerned about the dangers of TRIPS-plus clauses.

The TPP Agreement has evidence of adverse effects on India's generic companies and being a primary exporter of medicines to Australia, the two countries are moving towards a strategic dilemma of bilateral interests versus treaty compulsions. The generics decline will be discernible from the end of 2017 and the full-blown impact of TPP will be felt by 2020 (Mishra 2015).

7. CONCLUSION

India is a global exporter of generic medicines since the 1970s, owing to the unique and model Indian Patent Act, 1970. Even after the adoption of the TRIPS Agreement, the generic companies continued to meet the overwhelming demand for essential affordable medicines by appropriating on the flexibilities in the Agreement. In the recent past, Free Trade Agreements, especially the Trans-Pacific Partnership Agreement, have created a different scenario for India. The TRIPS-Plus standards promoted by these agreements have had adverse impact on India's generic exports and the TPP further challenges the sector.

The Trans Pacific Partnership Agreement is expected to have tremendous impact on India. The impact is multifaceted, in the form of trade diversion due to higher labour and environment standards leading to falling exports and imports, stiffer competition for local industries and rising unemployment. Foreign direct investment, market access and competitiveness could also be compromised due to changes in regional trade equations and differences in intellectual property protection standards between India and the TPP countries.

India should be cautious that TPP Agreement has the potential to hinder accessibility of affordable medicines in two realms- TRIPS-plus standards and transparency (anti-corruption-procedural fairness). The TRIPS-plus standards are applicable with respect to patent subject matter, patent term extension), protection of undisclosed test or other data, protection of undisclosed test or other data, and compulsory licensing. Undoubtedly, India needs to act cautiously in its bilateral relations with the TPP member countries, especially Australia and the US, the two major trading partners of India. India must prepare well domestically for finding better terms of negotiation and favourable conclusion of bilateral agreements with TPP countries (Nataraj 2016).

An overview of India Australia relations reveal that the countries have had an amicable relation since the beginning, only to be disturbed by difference of opinion or orientation during the Cold War (though not detrimental) and certain issues of the recent past regarding Indian migrants. The economic interactions have also been running smoothly, as depicted by the trade flow. India and Australia share a unique relation in respect of migration and education. Australia accounts for the most preferred destination for Indian students. In spite of such a vibrant relationship, the Trans Pacific Partnership is feared to mar the dealings because of the impact of the Agreement on all countries in the Indo Pacific region and the lack of interest on the part of Australia to limit the inclusion of TRIPS-plus standards in the TPP. The TPP should prompt India to adopt a cautious approach.

Endnotes

¹ ‘evergreening’ refers to the process of gaining longer periods of exclusivity on a medicine through sanctioning successive and overlapping patents on new forms of old medicines. An overwhelming majority of patents relating to medicines today are for new uses, new forms or new formulations/dosages/combinations of existing medicines.

² Bolar provision allows generic manufacturers to obtain provisional regulatory marketing approval or “registration” in order to be ready to enter the market as soon as the patent barrier no longer exists.

³ Biologics are complex drugs from biological sources for treatment of chronic diseases like cancer and arthritis.

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Newness in India-Australia Relations: “As Never Before”

Mithila Bagai*

Abstract

The recent visit by Indian Prime Minister Narendra Modi to Australia is historic for many reasons, especially due to the fact that this visit is after a long gap of 28 years. On the other hand, Australia has been keen in keeping a steady interaction through regular visits to India. The initiative by Narendra Modi breaths a fresh air into the relation and the paper examines the newness and the challenges and opportunities raised by the changing interaction between India and Australia. A detailed study of various areas of cooperation, namely, trade and investment, Uranium export, education, agriculture, security etc, is undertaken in the paper.

Key Words: Narendra Modi, Tony Abbott, trade and investment, education, agriculture, uranium, security, India Australia relations

1. INTRODUCTION

“Australia will not be at the periphery of our vision, but at the center of our thought. So we stand together at a moment of enormous opportunity and great responsibility”, said Indian Prime Minister Narendra Modi who infused new energy and rigor in the relations by becoming the first Prime Minister to visit Australia after a long gap of 28 years (Weigold 2015). His above said remarks made in an address to the joint sitting of Parliament in Canberra in November 2014 underlines the plethora of opportunities to be tapped and the responsibilities to be shared for the mutual advancement and development of both the countries.

Though all Australian Prime Ministers, barring Paul John Keating (1991-1996), have visited India during the past 28 years, Indian Prime Minister Rajiv Gandhi was the last to visit Australia, in 1986. In other words, since the 1950s there have been three visits to India by Australian Prime Ministers for every one visit by an Indian Prime Minister (Australian Polity 2011). The reasons for this cold relation are abound. Firstly, Australia’s reluctance in trading nuclear fuel to a responsible country like India and engaging in the same trade with China, whose notorious supply to Pakistan and Iran is well known, caused a major distrust in the relations. Secondly, Australia’s policy was to closely ally with America rather than being an autonomous power. And a non-aligned India had no intentions to drift away its scarce resources and capital in sustaining the cold war. Thirdly, the racist attitude in Australia and its recent culmination in the form of

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attacks on Indian students underline the discriminatory practices of the country. Fourthly, before the advent of the threat of China, India and Australia did not consider each other geographically relevant. For India, embroiled in wars with China and Pakistan, its immediate neighborhood was the priority. But a change in national and international situation has made India not only to 'Look East' but also to "Act East". The stillness in Indo-Australian relations has become a thing of past.

The signing of Indo-US nuclear deal in 2008 provided a much-needed fillip to Indo-US ties. Hillary Clinton, then US Secretary of State, remarked during a visit to India, "I consider India not just a regional power, but a global power" (Economic Times 2012). With these new developments, Australia began to see India as a leader and provider of public goods to Asia Pacific region. The Asia Pacific region, under the threat of aggressive and expansionist China, needs peace and stability for securing the free sea-lanes of communication so that the flow of trade and commerce remains unhindered. In 2009, Australia and India became strategic partners.

Also, post the nineties era, politics has come to be defined more in terms of economics, terming it as Political Economy. With the opening of new economic vistas, India and Australia are now looking ahead at the opportunities to enhance their bilateral trade to further their growth and development.

The new optimism in India Australia relations is further reflected in the words of Australian Prime Minister Tony Abbott, "this is the time to turn the warm friendship between Australia and India, the long history that Australia and India have together, into something that will be meaningful, more meaningful for us and significant for the wider world" (Dept. of Defence 2015).

In this paper, I will look at new areas of cooperation and engagement with Australia and the obstacles that need to be weeded out to achieve peace and prosperity in this Asian Century.

2. FRESHNESS INFUSED: AREAS OF COOPERATION

i. Trade and Investment

Tony Abbott and Narendra Modi were voted to power on the same plank, that is, infrastructure, business investments, greater trade and deregulation. And Abbott's successor and current Australian Prime Minister Malcolm Turnbull, a social liberal, too has an eye for economic reforms, which makes him popular with business groups (Brewster 2015). Since the current Head of States share the same vision, it will be easy for them to capitalize on the massive trade potential that the two countries possess.

In 2014-15, India became Australia's 12th-largest trading partner with two-way trade of \$13 billion (Business Line 2015). Major Australian exports in the same year were coal being the largest, followed by gold, copper ore and concentrates and vegetables. And India exported refined petroleum, the highest, followed by medicaments, pearls and gems, and passenger motor vehicles.

Two way trade in goods and services has grown in value from \$6.8billion in FY 2003-04 to \$14.8billion in FY 2013-14 (Dept. of Foreign Affairs and Trade 2015). India’s exports from Australia averages around 86% of the total export and 95% of total import from Oceania region that is the highest amongst all the trade that India conducts in the Oceania region.

In terms of Foreign Direct Investment, Department of Industrial Policy and Promotion ranked Australia as 24th among nations that have invested in India from April 2000 to February 2015. During this period, Australia invested around \$649.75million in India that is 0.26% of entire FDI inflows in India (Dept. of Industrial Policy and Promotion 2015). While Indian investment in Australia is valued at \$11.0 billion (ranked 23rd), whereas Chinese investment is valued at \$64.5billion (ranked 7th).

Top sectors that attracted FDI equity inflows from Australia are, agriculture and mining, manufacturing, services, construction, finance, insurance and business services, hotel and tourism sector. Major Indian companies doing business in Australia are Adani, JSPL, Lanco Infratech, GVK, NMDC, GMR, Tata Group, Aditya Birla Group, Vedanta, JSW Steel, ICVL, Infosys, Pentasoft, HCL and Wipro. And major Australian companies who are doing business in India are BHP Billiton, Rio Tinto, Snowy Mountain Engineering, Macquarie Group and Leighton Holdings (FICCI 2015).

Signing of the Comprehensive Economic Cooperation Agreement is close on the heels. Negotiations to conclude CECA were launched in May 2011. There have been nine rounds of negotiations and the recent one was held in September 2015. Finance Minister Arun Jaitley visited Australia in March 2016 and said that talks on FTA are “fairly at an advanced stage”(PTI 2016). The delay in the conclusion of the agreement is because of Australia’s demand for tariff reduction in dairy, fresh fruit, pharmaceuticals, meats and wines. On the other hand, India wants zero duty on auto parts, textiles, and fresh fruits including mangoes and greater access in services sector (PTI 2016).

CECA would assist in broadening the base of merchandise trade by addressing tariff barriers and behind the border restrictions on trade in goods. It will also facilitate growth in services trade by reducing barriers faced by Australian service suppliers and by increasing regulatory transparency services. It could also facilitate and encourage investment by reducing barriers, increasing transparency and enhancing investment protections (Dept. of Foreign Affairs and Trade 2015).

But a lot much has to be achieved on the trade front. In India’s top major trading countries, Australia does not find any mention. Despite the plethora of opportunities to capitalise, the trade between the two has dwindled. In 2014-15, though India became Australia’s 12th-largest trading partner with two-way trade of \$13 billion (Business Line 2015), there was a noticeable decline from \$17 billion in 2010-11. According to an Organization for Economic Cooperation and

Development (OECD) working paper, India's middle class will rise from 5-10% of its population today to 90% in 30 years. This offers immense opportunity to Australian exporters. Supplementing this tremendous opportunity with Prime Minister Narendra Modi's 'Make in India' dream, the economics between the two has a lot to offer.

ii. Uranium: The Yellow Cake

Australia has about 40% of the world's proven recoverable resources (Clarke et al 2013). And its production is ranked third after Kazakhstan and Canada (Evans 2016).

In 2007, then Australian Prime Minister John Howard agreed to sell Uranium to India but the succeeding Head of Government, Kevin Rudd, overturned the decision. Australia's hesitation in supplying uranium fuel to India was to do with its staunch support to non proliferation ideal. While Australia is a founding member of Nuclear Suppliers Group, India is not a member of NPT as it is considered as an 'apartheid' policy which allows nuclear weapon states to further push their nuclear programs and prevents the spread to non nuclear states. The contentious issue with uranium is that the spent fuel can be reprocessed into plutonium that can then be reused for making nuclear bombs. And since no clarity has emerged on spent fuel, Australia's indecisiveness can be credited to this reason.

Though uranium production and supply are not much of significance but its refusal to India has been a major thaw given that Australia supplies yellow cake to China whose notorious supply to Pakistan is well known. Uranium mining is of minor importance to Australia and does not figure in major economic minerals. Production of iron ore with a value at AUD 34 billion and black coal at AUD 61 billion in 2008-09, easily dwarf the value of uranium production of AUD 1 billion (Clarke et al 2013). And amongst all the exports to India in 2014-15, coal was the highest. And for supply of uranium, India has treaties with largest producer namely Kazakhstan and Canada.

India being a developing democracy requires a clean energy fuel to meet its developmental needs. Moreover, India has firm belief in its policy of 'minimum credible deterrence' and 'No First Use policy'. Diversion of resources to defense or military advancement will accrue huge political and economic costs to the Head of State.

In 2008, United States of America signed a historic civilian nuclear deal with India, which allowed the latter to purchase nuclear fuel and technology from USA for civilian purposes. And since Australia is a close ally of America, the former treaded the same line and in the same year, Jullia Gillard, then Prime Minister reversed Rudd's decision to allow export of Uranium to India. The current Prime Minister Malcolm Turnbull has completed the procedures to start the sales of uranium to India. India will be the first non NPT signatory country to get nuclear fuel from Australia. The deal has imbued trust and added a new zing to the relationship.

Trade of uranium to India will be of great economic benefit to Australia. India has six new nuclear power plants under construction that will produce new nuclear capacity of 2506 MWe and it has 19 existing units whose existing nuclear capacity is of 4189 MWe (Clarke et al 2013). Signing of civilian nuclear deal of 2008 has freed India from import constraints and facilitated the trade between two responsible democratic countries.

iii. Education

Education is Australia's third largest service export sector, behind tourism and transportation (Carrington et al 2007). And India has the largest youth population with 356 million between the age group of 10-24 year olds (PTI 2014). Capitalizing on this potential, Australia's export in education related services to India stood at a value of AUD\$1,428 in 2012 which rose to AUD1,805 in 2014, though there was a decline to AUD1,293 in 2013 following the attacks on Indian students. Despite this, an opinion poll conducted by Lowy Institute and Australia India Institute in 2013, Indians ranked Australia as the second most preferred country to study abroad next to US.

Education related travel to Australia amounts to over \$2 billion. According to the Department of Foreign Affairs and Trade, "enrolment of Indian students in Australia has increased at an average annual rate of around 41 per cent since 2002." In 2009, over 1,20,000 Indian students were studying in Australia.

But the share of exports of education related services is less in comparison to China, despite the fact that China homes the second largest youth population with 269 million young people in the age group of 10-24 years (PTI 2014). In 2012, China exported AUD 3,939 education services to Australia, which rose to AUD 4,408 in 2014.

But education cannot be solely looked as a means of revenue. It contributes to social capita as well. Under New Colombo Plan, Australian students who will be coming in India will encourage cultural exchange and people to people skills.

iv. Agriculture

Food Security is a major concern in India. She has to feed her rising population and sustain agricultural production with its depleting resources. The myriad challenges in Indian agriculture sector present significant opportunities for Australian technology, expertise, products and services to improve efficiency of Indian agriculture sector.

Stagnant cereal crop yields and low yields of fruits and vegetables are the ills plaguing our agriculture sector. India's demand for milk will reach 200 million tons by 2020. To achieve this, an annual production growth rate of 6-7% is required from current base of 130 million tons of production (ATIC 2015). Storage is also a major problem, which calls for international

participation. In irrigation, there is an overdependence on ground water, which gets compounded by inefficiencies in water application technology. India is now concentrating on micro irrigation technologies to increase the productivity of per unit area and per unit of water available. An estimated 27 million hectares of land wields a potential for drip irrigation application. Australia's expertise and technology can help in furthering the efficiency in this front. Another potential is in the mechanization of Indian agriculture. Till now the Indian farm machinery consisted of low horsepower tractors only but is now focusing on crop specific mechanisation solutions in the crop life cycle from field preparation, to planting, spraying and harvesting. Australia is also a key supplier of pulses to Indian market. There are emerging opportunities in supply of canola oil, oats and malting barley (ATIC 2015).

Australia's strength lies in innovation and customization capabilities, which can address the climate change and deliver goods despite the huge geographic distance. The disadvantage with Australia is in its lack of visibility in its domain expertise areas of soil management agriculture in pre and post harvest, storage and handling, processing, transport of perishable goods, input seeds and fertilizers. MoU was also signed in September 2014 between University of Queensland, Australia and the Indian Council of Agricultural Research to strengthen the linkages in the area of agriculture (ANI 2014).

v. The Security Concerns of Asia Pacific region

Underlining the significance of oceans and its safety, Narendra Modi, in his address to Parliament of Canberra in 2014, said that Australia and India share "a natural partnership", are both dependent on the oceans as "lifelines", and harbor growing concern about "access and security" (Cronin and Baruah 2014).

The Australian Strategic Policy Institute once described the Indian Ocean as Australia's "ocean of neglect" that is "rediscovered" every fifteen years or so (Australian Polity 2011). Australia focused on Indian Ocean in the late 1970s and early 1980s when the Soviet Union invaded Afghanistan, and then in 1990s when Australia was building coalitions in IOR (Indian Ocean Region) and now once again, she is rediscovering the ocean. Neglecting IOR will be at Australia's risk now. Australia is very much significant part of Indian Ocean. And Australian Polity (2011) also acknowledges the same. "Australia is also a nation of the Indian Ocean, with our western coastline bordering the south-eastern edge of the Indian Ocean Rim".

Australia has realized the significance of the Indian Ocean and officially declared its interest in the ocean in 2013 (Singh 2014). In 2010, Kevin Rudd, then Minister for Foreign Affairs and Trade declared in a speech "now Australia must look west, to the great challenges and opportunities that now present themselves across the Indian Ocean region" (Bateman and Bergin 2011). The reason for the re-emergence of the focus on Indian Ocean is its strategic and economic importance. Australia has to currently deal with traditional threats of intrastate conflicts, drugs,

arms and people smuggling, and illegal fishing. Terrorism is a major threat and the commonwealth country seeks the protection of its offshore oil and gas facilities, port terminals and pipelines. And in terms of non-traditional threats, climate change, sea level rise, food insecurity, disease and famine and natural disasters require cooperation of maritime regional powers.

Indian Ocean provides critical trade routes that connect Middle East, Africa and South Asia with the broader Asian continent to the East and Europe to the West. It also provides important strategic chokepoints including Straits of Hormuz and Malacca through which 32.2 millions of barrels of crude oil and petroleum are transported per day – more than 50% of the world’s maritime oil trade. Nearly 40% of world off shore petroleum is produced in the Ocean and is a storehouse of rich minerals and fisheries.

In the time of global economy, secure Sea Lanes of Communications (SLOCs) (Figure 1) that transport oil and resources through oceans to the country is of immense significance. Asia Pacific region ranges from East Africa, across the Indian Ocean to the Western and Central Pacific, including Japan and Australia. South China Sea also plays an important role given that 55% of Indian trade transits through South China Sea (Goud and Mookherjee 2015:114). The movement of international trade in oceans can only be secured when there is a free and fair passage, unhindered by the seizure of any unruly power.

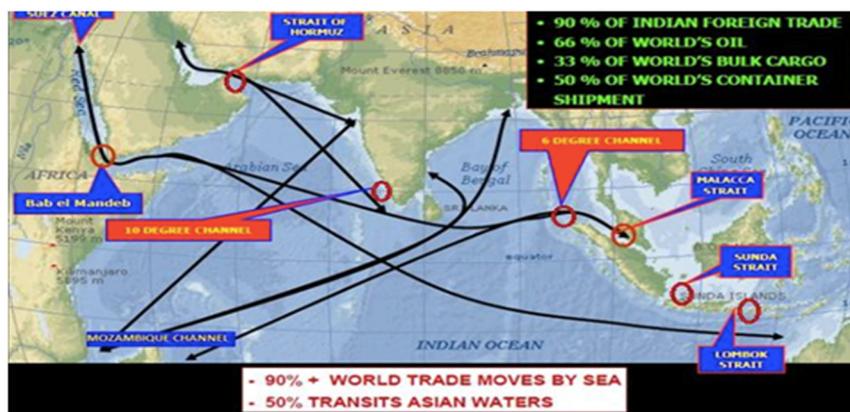


Figure 1: Indian Ocean Sea Lanes of Communication and Choke Points (Fatima and Jamshed 2015)

But the global power structure is undergoing a conspicuous transformation. The not so silent rise of an authoritarian China is threatening the peace and stability of an Asia Pacific region. The tense relation between India and China is very much evident. The expansionist maritime behavior of China in South China Sea and Indian Ocean has alarmed the regional powers. India is suspicious of the increasing presence of China in Indian Ocean though the latter has claimed that it's for commercial reasons. Brahma Chellaney of Centre for Policy Research (CPR), an independent

think tank has argued that Chinese presence is for asserting itself as a dominant player in Asia. China has deployed greater number of naval forces to conduct anti piracy operations in Western Indian Ocean and she also sells arms including tanks, frigates, missiles, and radar to India's neighbors. China is currently restricting its military capabilities. In September 2015, Xi Jinping announced that People's Liberation Army would reduce 300,000 of its troops to redistribute resources to sea and air capabilities (Albert 2015). In October 2015, China finalized the sale of eight submarines to Pakistan and its submarines have currently docked at the Sri Lankan port of Colombo and Pakistani port of Karachi (Albert 2015).

India too reciprocated by upping its military bases, building modernized equipment and fleets, constructing new maritime assets, and expanding security ties with regional maritime powers. It has also sent her vessels to visit the South China Sea, and calling for freedom of navigation and peaceful resolution of territorial disputes as part of its 'Act East' policy. In 2013, then Indian Prime Minister Manmohan Singh said, "we have also sought to assume our responsibility for stability in the Indian Ocean region. We are well positioned, therefore, to become a net provider of security in our immediate neighborhood and beyond" (PTI 2013).

In November 2009, the two commonwealth countries upgraded their relationship to strategic partnership. They followed it by a Joint Declaration on Security Cooperation that will further boost cooperation in wide range of security and related areas including counter terrorism, defense, disarmament, non proliferation and maritime security and streamline their joint efforts to maintain peace, stability, and prosperity in the Asia Pacific region (Ministry of External Affairs 2009). In 2013, Australia's Defense White Paper prioritized relations with India and Indonesia. And shortly after its release, Australia released Country Strategy Document on India that identified India as possessing the most potential for a close maritime partnership. To capitalize on Indian Navy's strength and further boost cooperation in Indian Ocean, Australia and India have worked together on many multilateral fronts. They have attempted to revive Indian Ocean Rim Association for Regional Cooperation (IOR-ARC, now known as Indian Ocean Rim Association, IORA) and also established Indian Ocean Naval Symposium (IONS) in 2008 that facilitates the exchange of military views to enhance communication and transparency across the region's naval forces to discuss regionally relevant maritime issues. ASEAN Defense Ministers Meeting plus 8 held in Hanoi on October 12, 2010 is another potential forum to establish new regional security architecture to build confidence, practical cooperation among defense leaders and militaries, and promote peace and prosperity in Asia Pacific region.

In 2015, Indian Navy and Royal Australian Navy held their first ever bilateral maritime exercise AUSINDEX in India's Vishakhapatnam Port in Bay of Bengal to deepen their defense cooperation especially in the Indian Ocean. The objective was to facilitate professional interaction, both in harbor and at sea, and attain inter operability between the two navies. The exercise will strengthen regional joint and combined operations such as humanitarian assistance and disaster relief. Kevin Andrews, then Australia's defense Minister described the exercise as "a strong signal

of both countries commitment to building defense relations”. He also added that he looks forward “to identifying a range of new ideas to increase our existing defense cooperation” (Parameswaran 2015). Both navies have also been working together in anti piracy operations in Gulf of Aden. In 2013, at the special invitation of Australia, Indian Navy sent its latest indigenous warship INS Sahyadri to participate in International Fleet Review (IFR) in Sydney- a move that was widely perceived as a sign of growing nautical convergence. (Singh 2014).

Canberra and New Delhi had participated earlier also in multilateral maritime exercises including Malabar exercises in 2007 and Milan exercise in 2012. Malabar exercise began in 1993 with United States and India but was suspended when India had nuclear tests in 1998 and was resumed in 2002. In 2007, Australia too participated in but withdrew from further exercises after China expressed its anguish over the US led and China containment policy under President Barack Obama’s “Asia Pivot” doctrine. India too refused Australia’s invitation of annual naval exercise Kakadu. Australia also withdrew from Quadrilateral Security Dialogue in 2007 consisting of United States, India, Australia and Japan which was intended to establish “Asian arc of democracy”. (Figure 2) It later ceased to exist.



Figure 2: Asian Arc of Democracy

But the current excitement in Indo Australian relations can be accrued to the recent admission by Captain Sheldon Williams, a defense advisor at the Australian High Commission in New Delhi, that there is a “potential for increased security tensions in the Indian Ocean” (Parameswaran 2015).

United States cannot continue to be a provider of public goods to the Indian Ocean for long. In the light of a poorly performing economy and a loss of its legitimacy among the people of region, many of whom are Muslims, the United States won’t be able to sustain its influence. Robert Kaplan has argued “the gradual loss of the Indian and Western Pacific Oceans as veritable American military lakes” (Kaplan 2010:278). Yet, the US will continue to provide support to contain any aggressive and expansionist tendencies by rising powers. In 2009, when US Secretary of State, Hillary Clinton visited India in 2009 she remarked, “I consider India not just a regional power, but a global power.” This might be the first time that a dominant power has acknowledged a country as a global power.

So now the onus to preserve the peace, prosperity and stability in the oceans now lies with regional maritime powers. India and Australia are already part of many multilateral institutions – G20, Commonwealth, Asian Regional Forum, Asia Pacific Partnership on Climate and Clean Development to name a few. They are also cooperating as Five Interested Parties (FIP) in World Trade Organization to overcome the initial deadlocks in WTO framework agreements. Australia is also an important player in Asia Pacific Economic Cooperation and supports India's membership in the organization. The former also strongly wants India to have a permanent seat in United Nations Security Council. In 2008, Australia also became an observer in SAARC organization.

The advancement in the relations of India-Australia is a breath of fresh air but the two commonwealths are wary of adopting a confrontationist approach towards any expansionist tendencies of a rising power. In these multilateral fora, India treads cautiously and has not asserted its role of a provider of security and peace in the region. This ambivalence has created suspicion in the minds of regional powers whether India is willing to take up the leadership mantle in Indian Ocean. Though India and Australia converge on the common concerns of not so silent rise of China, but Australia herself is not interested in coming forth to arrest the maritime behavior of China. The reasons abound. China's rise is no threat to Australia as there is a natural geographic barrier between the two countries. In fact, it is of great importance to Australia as it provides market stability in Asia, protects SLOCs and maintains peaceful and rule based regional order. India and Australia are also not looking for alternative partnerships as both have close alliances with the United States. But the two countries share the same democratic heritage, have multicultural social fabric and a federal political system. They encourage a free press and an independent judicial system. Both have an English speaking population who are vying for good jobs and a higher economic growth. So there is a need for cooperation not only by India and Australia though they can take lead, but also smaller countries to contain authoritarian tendencies and preserve freedom of navigation.

But there is also a need to acknowledge that China too needs SLOCs for her trade to be facilitated. So taking China out is just not an option and not even possible. The need is to sustain its freedom and peace and not become an ocean of contention. There are many areas of convergences where the attitude of domination and authoritarianism can reap wonders. Most prominently, counter terrorism requires cooperative mechanisms. Since trade has expanded and seas have become important medium of navigation, piracy has become another pressing problem. Anti Piracy operations can see all small and middle regional powers coming together to curb the rising menace. India and Australia can take lead in non proliferation and disarmament. Defense Analyst David Brewster talks about eleven domains of potential cooperation, which ranges from collaboration in regional institutions to humanitarian and disaster relief efforts to Antarctic research (Brewster 2015a).

Another important area where urgent intervention is needed is fisheries management. The ocean has rich fish stocks. But underdevelopment of ocean's infrastructure and its under

management have caused the decline of fishes in oceans. Australia has relevant expertise and can contribute in making cooperative fisheries management effective in Indian Ocean. Regional forums like IOR-ARC and IONS need to be effectively used to deal with current problems. The onus of security of Indo Pacific region from traditional and nontraditional threats does not lie solely with two commonwealth countries but requires greater involvement at a much wider scale. But it's the larger responsibility of India and Australia to take the lead and initiate discussions and build cooperation.

3. CONCLUSION

This is a natural partnership arising from our shared values and interests, and our strategic maritime locations. India and Australia have a great economic synergy. There are huge opportunities for partnership in every area we can think of – agriculture, agro processing, resources, energy, finance, infrastructure, education and science and technology (PTI 2014a).

During his visit to Australia in 2014, Indian Prime Minister Narendra Modi remarked that India and Australia relations have graduated to natural partnership. Though China is a concern, there are myriad opportunities that now need to be looked at. America can continue to be a support in Asia Pacific region but there are many convergences on which India Australia can build independent relationships.

Tony Abbott too has reciprocated the enthusiasm and new rigor in the relationships when he said that India and Australian interests are converging “as never before” (Sibal 2014).

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Strengthening India Australia Ties: Prospects for Cooperation in Southeast Asia

Nivedita Kapoor*

Abstract

In the past few years, India-Australia relation has witnessed a significant improvement, with both countries gradually realising the geopolitical and economic benefits of cooperating with each other. These benefits are particularly striking when we consider Southeast Asia, where both parties have common interests in several areas. The two states have the potential of cooperating and enhancing their presence in sectors of both traditional and non-traditional security including terrorism, maritime security, transnational crimes, South China Sea dispute and disaster management. With US pivot to Asia and rapid rise of China in the region, the presence of India and Australia also becomes important as middle level powers crucial in maintaining the multilateral balance of power in Southeast Asia. The two states have been particularly concerned about Chinese assertiveness in the region and its impact in coming years. For these reasons, potential exists between India and Australia for cooperating with the regional powers of Southeast Asia bilaterally and in multilateral forums to maintain a balance of power, ensuring no one power comes to exercise a hegemonic influence.

Key Words: *India, Australia, Southeast Asia, ASEAN, China*

1. INTRODUCTION

Indo-Australia ties have come a long way since the days following Pokhran nuclear tests in 1998 when the relationship soured as Australia expressed its deep displeasure at India's actions. The steady improvement of ties with the United States has also led to a commensurate improvement of bilateral relationship between the two states. The change has been such that it has resulted in the bilateral relationship being upgraded to strategic partnership level in 2009. At present, India is Australia's fourth biggest export market, with cooperation rising rapidly in different sectors of the economy. Apart from economic cooperation, the two states have shown remarkable progress in the security sphere (Brewster 2010). India is Australia's eighth largest two-way trading partner, and its seventh fastest-growing trading partner. Australia has initiated high level contacts with India, making meetings of foreign ministers a regular occurrence (Cronin et al 2013).

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The change in the bilateral partnership has also come due to India steadily making its presence felt as an important power both in regional and world affairs, leading Australia to turn its attention towards the Asian nation. Australia has recognised the rise of various other Asian powers too and the critical role they are destined to play in their backyard. Both the states share a common goal of ensuring regional stability and having a rule-based security order around them. Moreover, regional security issues have ensured that both states recognize the importance of collaborating with each other (Panda 2012).

While some scholars term the two states as “logical strategic partners,” others caution about the limited security interests they have in common, while admitting that their presence and proximity across a common ocean does raise prospects for a better understanding (Brewster 2010). But it cannot be denied that both states are increasingly realising the possible implications of neglecting each other.

In fact, the Australian Ministry of Defence in its White Paper in 2013 declared that the country’s area of strategic interest was the Indo-Pacific – recognizing, among other factors, the rise of India in the region. As Rory Medcalf (2014) notes, the concept of Indo-Pacific has been defined in the paper with Southeast Asia as the “geographic centre” and a key area for Australian engagement. The Indian Prime Minister Manmohan Singh, Japan and the United States of America have also started using the term at various points to indicate its growing acceptance. Due to presence of major powers like China and the US in Indo-Pacific, the concept further underlines the role of other actors like India, Australia and ASEAN, among others, in the power balancing in the wider region as well as Southeast Asia (Kumar 2014). As the importance of Indian Ocean to the security of India and Australia grows, it is only natural that their “spheres of action and influence” will overlap (Grare 2014).

If one looks at the foreign policy trajectories of India and Australia, both have been working towards steadily increasing their presence in and around Southeast Asia. Australia was one of the states that took the lead in formation of APEC, indicating its desire to be part of a collective, regional process in the region. While the organisation enjoyed limited success, subsequent years were followed by an Australian disengagement, a policy that is now being slowly reversed since the mid nineties. Bilateral ties of various states in Southeast Asia with Australia have steadily grown, as seen in the free trade agreement signed between ASEAN, Australia and New Zealand in 2005. Compared with Australia, India has been an even more new entrant on the scene. The progress on engaging with ASEAN was slow and in the initial years, the Look East policy moved slowly on the ground. This is now changing with Indo-ASEAN relations being institutionalised in 2002 (Nair 2009). Also, while the focus of initial years of Look East policy was on ASEAN, it has since been expanded to include “Australia, China and East Asia with ASEAN at its core.” This has also led to a shift in focus from purely economic ties to economic and security ties, including new non-traditional threats (Tai Yong et al 2009).

India, Australia and ASEAN form part of several bilateral and multilateral bodies in Southeast Asia – all the parties looking at the evolving geopolitical changes in their neighbourhood – particularly the rise of China and the subsequent US policy towards it (Nair 2009).

Some scholars note that India, ASEAN and Australia can together form the basis of a new order in the broader East Asia (Mohan 2009). However, with India-Australia bilateral relationship still in the process of taking off, it would be some time before the two nations can get their policies aligned on something as elaborate and significant as a regional security architecture (Brewster 2014). Yet, there is no denying that several areas of convergence between the two states exist when it comes to Southeast Asia, where both agree that ASEAN should be the leading force for regional balance with other major powers providing the necessary strength.

Australia has always insisted that US is the key to guaranteeing peace and security in the region, being a treaty defence partner of the superpower. At the same time, both India and Australia are also looking at their own close economic dependence on China even as they remain concerned about its future course of action in Southeast Asia. With Australia worried about the impact of a US-China confrontation on its policies (Cronin et al 2013), it is looking for new partners in the region in case of trouble, making its alliance with India even more significant.

Already, it has been noticed that several countries in Asia are ramping up their security cooperation like never before, both as a result of changing power balance with regard to both US and China as well as due to a need to address various non-traditional security threats that seem to have increased over the years (Cronin et al 2013).

Australia has increased its development aid to India and to other ASEAN states like Vietnam and Indonesia. India has also made a conscious effort to increase its investment in Southeast Asia, making it an essential part of its Look East strategy, which also encompasses its renewed focus on Australia.

The improvement in bilateral relationship also helps states like India and Australia to play a more prominent role in regional affairs. The rising regional profile of these middle level states has also prompted this change with the old policy of US hub and spokes policy giving way to a more assertive bilateral partnership between states looking to hedge against the uncertainty of both US power projection in the region and the rise of an increasingly aggressive China.

Keeping all these factors in mind, it can be argued that despite limitations, there are several areas where India and Australia can come together to improve both the bilateral and regional situation. This paper will look at the various avenues for cooperation between the two countries in Southeast Asia.

2. TRADITIONAL SECURITY ISSUES

While non-traditional security issues have dominated the discourse on the issue, one cannot discount the traditional security concerns that remain at the forefront for policymakers in both India and Australia. This can be gauged from the steady rise in multilateral exercises conducted to improve defence ties by both India and Australia with various Southeast Asia states, the most notable one being the Milan biennial exercise among navies of India, Singapore, Indonesia, Malaysia and Thailand. Australia has also seen similar exercises with states of the region increasing steadily over the years.

These exercises have moved beyond preparing for non-traditional contingencies to the ones involving “war fighting capabilities,” creating potential in the future for them to work together in “unprecedented ways” on “regional security issues” (Cronin et al 2013). While it is unclear as to how this would ultimately pan out in the region, it is bound to have important consequences for policy of both India and Australia with regard to China, as they look towards disputes involving maritime security besides trying to ensure a stable balance of power in the region to prevent any hegemonic influence. This would also be a very important factor in maintaining peace and stability in the region by working to prevent use of military prowess by any state to settle scores.

i. Maritime Security

The critical nature of maritime security in today’s world can be gauged from one simple fact that about “Ninety per cent of total international trade is currently transported by sea and is valued at US \$155 billion annually” (Nik 2009). India, Australia and Southeast Asian states all depend on maintaining a peaceful maritime security environment for an uninterrupted flow of trade and business via sea lines. If one looks at the three countries, some of the world’s most important sea lines of communication pass around and through their maritime territories (Rahman 2009). Naturally, efforts have been made to secure these lines.

One of the results of these efforts has been the India-Australia Joint Declaration on Security Cooperation (2009) that lists maritime security as an area of “common interest” for India and Australia. Following up on this, both countries held their first joint military exercise AUSINDEX in September 2015. This comes after several years of both countries declining each others’ invitations to participate in such exercises, straining an already limited relationship that has suffered from a fear of Australia being a little too willing to accommodate China (Frederic Grare 2014). The Indian sovereignty over Andaman and Nicobar Islands places it at a unique position to the entrance to seas of Southeast Asia, making the country a vital component of maritime security in the region. As former Prime Minister A.B Vajpayee pointed out, “Our security environment ranges from the Persian Gulf to the Straits of Malacca across the Indian Ocean, including Central Asia and Afghanistan in the North-West, China in the North-East and South East Asia. Our strategic thinking also has to extend to these horizons” (Tai Yong et al 2009).

India is working towards improving its maritime ties with ASEAN states like Vietnam, slowly expanding its presence through conscious implementation of Look East policy. Australia too has been playing a major role in improving maritime security in the region, primarily through training and equipping law enforcement in various ASEAN states. Apart from traditional allies like Malaysia and Singapore, the Australian government has been extending its services in the area to Indonesia among others. It has also participated in negotiation of “The Co-operative Mechanism between the Littoral States and User States on Safety of Navigation and Environmental Protection in the Straits of Malacca and Singapore” in 2007, to set up “formal arrangements for maritime user states to assist the straits states to maintain safety of navigation — and, implicitly, security — in the Malacca and Singapore Straits” (Rahman 2009). In recent years, India and Australia have improved their maritime cooperation by deciding to share intelligence and establishing a maritime security operations working group, with both governments declaring the Indian Ocean region as vital to their cooperation. While Indian navy has already described Chinese navy growth as one of concern, Australia too does have some concerns regarding the rapid naval developments in the Asian dragon – providing all parties scope for coordination. As Ramli H. Nik (2009) notes, from maritime security view, the cooperation of ASEAN, India and Australia is akin to a “strategic partnership.” Efforts made towards interoperability of navies, better training and intelligence sharing have all enhanced this relationship. This can be further expanded in the future through confidence building measures and more military and diplomatic cooperation, like establishment of a maritime peacekeeping force.

ii. South China Sea Dispute

With the rapid development of Chinese military and naval capacities, the region has seen a steady rise in tensions around South China Sea, with China, Vietnam and Philippines all staking a claim. An increasingly assertive Beijing, carrying out island building activities, has ruffled feathers across the region and put pressure on the US to increase its presence to quell regional tensions. Here, Australia is seen as a critical US ally in maintaining stability, with both New Delhi and Canberra interested in minimizing any potential conflict and keeping open SLOCs. And even as they try to accomplish these goals, neither can ignore the critical role of China in their economies, making a balancing act indispensable for both India and Australia (Panda 2012).

India has already expressed its concern about China deploying its submarines near Straits of Malacca, making it nervous about future possibility of a conflict spilling over onto the sea and resulting in China flexing its muscles around the waters. A similar concern about China’s expansion into South China Sea can be seen in Australia (Grare 2014). It is believed that the anti-submarine warfare being focused on in the bilateral maritime exercises by the two states is due to China’s deployment of nuclear submarines in the Indian Ocean (Parameswaran 2015). However, due to reluctance on part of Australia to significantly increase its defence budget, the security partnership with the island nation has been limited (Cronin et al 2013).

Furthermore, India for the first time in 2005 conducted a joint maritime exercise with Singapore in South China Sea. Both India and Australia have also seen an improvement in ties with other Southeast Asian states claiming their share in the South China Sea – including Vietnam and Philippines. While India and Vietnam have signed Joint Vision Statement on defence cooperation for 2015-2020 (Sharma 2015), the Australian Navy has been making regular port calls. Vietnam has been concerned about Chinese claims to the disputed area and has been actively engaging other powers to help prevent the latter from taking over. In this case, both India and Australia have seen their interests converge.

3. NON TRADITIONAL SECURITY ISSUES

As non traditional security issues have acquired increasing importance among policy makers across the world, the trend also being reflected with regard to Southeast Asia. The increased bilateral partnerships vis-a-vis the region are witness to this phenomenon with states focusing on issues ranging from protection to sea lanes to piracy to terrorism to humanitarian assistance and disaster relief. These ties are being used in times of crisis to provide aid, share intelligence and mitigate damages (Cronin et al 2013). For instance, the seas “of the ASEAN-Australia-India triangle” due to their relatively easy mode of transportation and communications help “organized criminal groups engaged in activities such as piracy and armed robbery at sea; the smuggling of arms, drugs, and people” (Rahman 2009). Coordinated patrols and aerial surveillance by cooperation among ASEAN states has contributed to the safety of sea lanes. Transnational crimes, terrorism, natural disasters among others have all plagued Southeast Asia, increasing the need for a more coordinated approach to these problems.

i. Terrorism and Arms Trade

Southeast Asia is a critical waterway for international trade and commerce, being home to crucial sea-lanes and straits, “including the Malacca Straits, one of the busiest waterways in the world. More than 50,000 vessels on international routes transit the Malacca Straits each year, which connects the Indian Ocean with the South China Sea” (Liss 2007). This makes the security of seas in the area crucial to not just to the region but also to other states who depend on safe passage of ships through the waterways here. The extent of threats here ranges from fraud to piracy to terrorism. In the past, local insurgency groups have caused trouble for foreign businesses, with the Free Aceh Movement, Moro Islamic Liberation Front and Abu Sayyaf being some of those held responsible. The threat from terrorist organisations like Al-Qaeda has also been feared. The presence of these groups also leads to illegal arms trade, another problem area that seems to have crept up in the region (Liss 2007).

The rise of Islamic terrorism in several Southeast Asian states has been a common cause of concern for both India and Australia, with Indonesia and Malaysia being of particular concern (Brewster 2014). There have also been cases of arms caches being intercepted in India, the point of origin for them being Southeast Asia (Tai Yong et al 2009), raising security concerns and prompting the need for better coordination to cut off supply lines to dangerous elements.

The financial crisis of 1998 led to a decline in military budgets of almost all ASEAN states, they are only now slowly making changes and focusing on modernization to counter threats that have arisen since the end of the Cold War.

Both India and Australia have signed declarations against terrorism with ASEAN, reflecting the desire of the partners to work together on the situation. Australia has also been part of organising seminars and training sessions on the subject in the region, proving to be of great aid to countries in Southeast Asia. India has focused on threats emerging to its maritime interest in Bay of Bengal-Strait of Malacca domain and networking against terrorist threats in the region (Lawrence and Prabhakar 2009).

The Australian Federal Police is already collaborating with Regional Counter Terrorism Cooperation Centres in Indonesia and the Philippines by posting liaison officers and participating in regional investigations. There however still remain several deficiencies at various levels when it comes to “unrestricted flow of intelligence” (Gordon 2009). International cooperation in the area is also critical when it comes to restricting flow of funds to terrorist organisations. The Asia-Pacific Group on Money Laundering, chaired by Australia, brings together ASEAN states and India among others on the issue.

Australia is already cooperating closely with Indonesia and Philippines to strengthen their counter terrorism capability and maritime security (Brewster 2014). There is a need to develop a framework with other ASEAN states too for a comprehensive regional policy to counter terrorism with states like India and Australia strengthening the process.

ii. Transnational Crimes

Despite not being seen as a direct security threat, transnational crimes constitute a critical, indirect threat to any nation – the countering of which is not possible without international partnership efforts. The rise in inter-connectedness of the world through technology has further facilitated crimes like cyber crimes, money laundering, arms smuggling, human trafficking, drug trafficking etc (Gordon 2009). Cases of this nature affecting India, Australia and Southeast Asia have been unearthed in the past.

The key to addressing this particular problem is to increase global partnerships towards fighting crime. Both India and Australia have expressed their desire to fight transnational crime together. ASEAN has already signed a declaration regarding transnational crime way back in 1997, slowly working to coordinate law enforcement responses on the issue as well (Wai Han 2009). Over the years, this has been expanded to include other powers in the region as well, to further improve effectiveness of nations in dealing with transnational crimes. Australia has been taking an active role in the region with regard to transnational crimes, being a co-chair of the Bali process with Indonesia besides coordinating with law enforcement authorities in states in Southeast Asia to address issues like illegal immigration, human trafficking, border security etc. India too is

a member of the Bali process, bringing it in close contact with Australia on issues of transnational importance. Other Southeast Asian states that form part of this group include Brunei, Malaysia, Myanmar, Philippines, South Korea, Singapore, Thailand and Vietnam.

There has also been support from Australia for Jakarta Centre for Law Enforcement Cooperation set up in 2004 to improve regional cooperation regarding transnational crimes. This centre works for training 'police, prosecutors, customs officers, immigration officers, and intelligence officers from the ASEAN states' to improve their abilities. Similarly, India also works to prevent smuggling, piracy, terrorism through Joint Coordination Patrol with Indonesia and Thailand (Nik 2009).

The Council for Security Cooperation in the Asia Pacific (CSCAP) of ASEAN also works on the issue of transnational crime and the working group dedicated to it in this non-governmental process aims at gaining a better understanding of crime trends in the region and looking at ways to combat it. It especially researches issues of counterfeiting, white collar crimes, smuggling, cyber crimes, arms trafficking, drug trafficking and money laundering to help facilitate cooperation between member states like India and Australia by encouraging data sharing, mutual collaboration, extradition etc (McFarlane 2000). ASEAN has discussed the idea of establishing an ASEAN centre for combating the problem while Philippines already has one. This becomes especially relevant due to a weakness of law enforcement in several Southeast Asian countries including Thailand, Philippines and Indonesia, as evidenced in their inability to contain above mentioned crimes being run from their territories.

For instance, they are also plagued by a lack of resources on the sea like patrol boats when it comes to dealing with issues like smuggling, human trafficking, piracy etc (Liss 2007). While joint naval exercises have helped, they have been unable to address the situation very effectively. A similar lack of capacity is also evident in dealing with the other above mentioned transnational crimes.

This has led outside powers including India and Australia to come forth and contribute their bit, as discussed in earlier paragraphs. While movement on such cooperation between ASEAN and foreign states has been minimal, it underlines the need to better train and equip regional forces, a role in which both India and Australia can make a difference.

iii. Piracy

The passage of international trade worth billions of dollars through the Southeast Asian maritime zone makes it a ready target for pirates. It must be noted that Southeast Asian states have taken a lead on the issue and taken steps to ensure safety from pirates. Such has been the improvement that London-based Lloyd's Market Association removed Straits of Malacca from its list of war-risk zones.

However, the problem still exists in some form, as in the first six months of 2015, “fifty-six cases of piracy had taken place in the Malacca Strait, of which twenty-one were cases of suspected piracy, twenty-two attempted piracies and thirteen real piracies.” ASEAN states have declared their intention to further improve coordination among navies of member states to further curb such activities (The Jakarta Post 2015). Australia has extended aid to Indonesia and Philippines in terms of both equipment and training to enable their authorities to ensure security of ships and ports. The ASEAN states still need radar, surveillance and training facilities to better patrol their areas. The threat has been real enough for Indian navy to step up its surveillance activities through a new naval station in Great Nicobar, while Australian forces, which already have a significant lead in the area, are also expanding their infrastructure like air fields (Brewster 2014). More sustained coordination is required among the three above mentioned actors to reduce the threat of piracy around vital sea lanes.

iv. Disaster Management

The devastating Tsunami in Indian Ocean revealed the extent of cooperation states need to have with each other in events of natural disasters where aid is crucial for saving human lives. In this case, India and Australia formed the core of states that worked with others in Southeast Asia to deliver aid (Nik 2009). Soon after this, both states took part in joint naval exercises as part of the “Quadrilateral Security Dialogue” but abandoned it hastily after negative Chinese reaction and a disinclination to poke the dragon. However, since then, both countries have announced bilateral naval exercises aimed to strengthen cooperation (Lowy Institute 2015). The first of these exercises were conducted a few months ago in September 2015. The AUSINDEX naval exercise, slated to be biennial in nature, is a means for coordinating the forces of the two countries in the event of “regional combined operations for humanitarian assistance and disaster relief” (NDTV 2015).

4. OTHER AREAS OF COOPERATION

i. Multilateral Organisations

ASEAN has been involved in establishing several multilateral bodies, starting with the ASEAN Regional Forum (ARF) in 1994. It provided the region with a multilateral security cooperation network and locked in major powers here, while maintaining the central role of ASEAN (Nair 2009). Subsequently, several economic organisations alongside political ones have been set up, with several like ASEAN Plus Three displaying high levels of coordination, eventually leading up to its expansion into East Asia Summit (EAS).

Both India and Australia have taken an active part in various international organisations that have sprung up as a result of initiative taken by ASEAN. These include ARF, Asia-Europe Meeting and East Asia Summit. This is also seen as an effective strategy by middle powers in Southeast Asia to prevent China from dominating the region (Grare 2014). Understanding this rationale and seeing its own interest reflected in this idea, in recent years, both Indian and Australian

governments have worked at their respective levels to promote these varied regional groupings to ensure all major powers have a say in the ongoing events (Brewster 2014).

There has also been a strategy followed by ASEAN to invite powers outside the region to prevent any one power from dominating regional bodies, which is why East Asia summit saw extending invitations to countries as far as India and Australia.

As part of expanding cooperation in EAS, the joint statement of foreign ministers of India and Australia mentioned bilateral cooperation in the multilateral forum for the first time in 2008 (Smith 2010). The forum is a valuable opportunity for both states to coordinate their position on various issues being considered by the organisation. The “inter-governmental” exchanges at these regional organisations further promote interaction between the two states and an exploration of shared interests (Cronin et al 2013). It also allows the two countries to engage with other like-minded states on critical issues concerning the Southeast Asian region, slowly working towards more concerted, balanced responses.

The ASEAN Defence Ministers Meeting (ADMM) has indicated a desire on part of ASEAN to engage with various powers in the region – including Australia and India – in order to further strategic cooperation (Nik 2009). The presence of states like India and Australia allows for a strengthening of these organisations that prevent the region from getting polarised between the two big powers, while increasing the possibility of solving regional disputes through multilateral means.

In the economic sphere, it must be noted that ASEAN states currently are looking at the merits and demerits of both Trans Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP). Australia is looking to become part of both agreements while India has indicated its interest in RCEP. It has been noted that joining of RCEP by India will help it to expand its economic engagement with ASEAN while helping it to “enter into FTA negotiations with China, Australia and New Zealand at the bilateral level.” This will boost its Look East policy, a factor that has constantly troubled China (Panda 2014). It would thus have the added benefit of further improving market access to countries like Australia and improve ties (Chatterjee and Singh 2015), further bringing the three entities into closer contact with each other.

Apart from formal multilateral organisations, new innovative ideas have also come up with the establishment of Council for Security Cooperation in the Asia-Pacific (CSCAP) which functions at the Second Track level. As mentioned earlier, it works in a non-governmental capacity to enhance regional cooperation and security through dialogue and consultation. Both India and Australia are members of this body, alongside other ASEAN and world powers. Its various groups look at maritime security, security building measures, transnational crime among others (MacFarlane 2000).

ii. Rise of China

Despite the previously lukewarm relationship, neither India nor Australia can deny that they are looking at the rise of China with obvious concern for their interests in the Asia Pacific. While neither wants a confrontation with Beijing, the two nations also do not want the region to be dominated by the Asian dragon (Grare 2014). Both India and Australia have significant trade relations with China and do not want the economic dimension to suffer while the desire to not be left without a strategy has prompted political cooperation between the two in regional groupings like ASEAN and its affiliated international organisation. This was reflected in the India-Australia Joint Declaration on Security Cooperation (2009) that singled out East Asia Summit and the ASEAN Regional Forum to achieve the goal of an “open and secure Asia”. While India and Australia may have differing perceptions of the implications of the rise of China at the broader international level, their interests in Southeast Asia with regard to this development “clearly overlap,” with both wanting to prevent a Chinese hegemony from arising (Grare 2014). The Southeast Asian states also seem to be thinking along the same lines, seeking both Canberra and New Delhi to enhance their security role to promote balanced distribution of power. In response, India has extended its naval presence here, constructing new facilities near the Andamans and Malacca straits. Australia too has demonstrated its willingness to balance its focus on Pacific with focus to its western borders (Brewster 2014).

In fact, both India and Australia have declared their intention to “promote regional stability” in “Asia and beyond”. The Australian defence ministry has already expressed its view that both India and Australia would benefit from working together to address the geopolitical changes taking place in the region.

While looking at Southeast Asia, in case of any conflict, despite its close partnership with the US, Australia is looking for partners in the region to ensure there is no threat to open sea lines of communication while maintaining a position where it is not marginalised (Grare 2014). As a result, Australia has actively pursued improvement of ties with regional power houses, particularly India and ASEAN, among others. India too is looking closely at the changing power balance and has in recent years turned its attention to Southeast Asia as an integral part of its broader Asia policy. The participation in ASEAN Regional Forum (ARF) has been driven by India’s desire to evolve a multilateral security framework for the region, alongside states like Australia.

At the same time, both India and Australia need to be careful of policy of isolating China, as it can have negative consequences. This consideration was seen in Australian withdrawal from the Malabar exercises and India’s withdrawal from trilateral naval exercise with US and Japan. These instances show both India and Australia walking the tightrope when it comes to China to avoid any incident that could worsen the security climate in the region.

However, as Brewster notes, it would be unwise for India-Australia ties in Southeast Asia to be guided primarily by the China factor as both states see the rising dragon a little differently

from each other. While both have an interest in being strong enough to prevent China from dominating the region, they cannot make it the centre-piece of their policy.

iii. US Pivot to Asia

The US pivot to Asia was launched as a result of implications of the rapid rise of China and an attempt by the former to assure its Asian allies of its continued presence in the region, despite a foreign policy seemingly heavily balanced in favour of Middle East and Afghanistan. The US initiative has been billed as a comprehensive “diplomatic, economic and military” policy to “enhance America’s commitment” to East Asia (Ross 2013).

A more belligerent China has led to deteriorating relations in the region and put strains on US-China ties as well. This has led other states in the region to worry about possibility of regional conflict and its potential implications for all involved.

As Robert S. Ross (2013) points out, Australia does not face a direct China threat, it can use its good relations with both US and China, plus its ties with other East Asian states, to promote regional stability. The pivot has also led to US “elevating its strategic dialogue” with India, with both working to expand economic and security partnership (Campbell and Andrews 2013). Besides India, US has improved its security and economic relationship across the states in the region, including Japan, South Korea, Singapore, Myanmar, Indonesia to name a few – alongside negotiating on TPP. US also recognises the role of ASEAN in this setting, arguing that a strong regional organisation helps address multilateral conflict issues more effectively.

This once again brings India, Australia and ASEAN to a common goal of maintaining regional stability to the benefit of all. While it has been argued that good bilateral ties with US discourage both New Delhi and Canberra from looking at alternatives, the increased focus on Asia has brought the attention back to nation-states in the region with a stake in maintaining their positions. Also, even as US has announced its pivot to Asia, there is still some lack of clarity about its implementation on the ground, making the bilateral partnership between India and Australia even more important for both states (Grare 2014).

5. CONCLUSION

As C. Raja Mohan (2009) points out, India’s history and economic growth means it will feature prominently in ASEAN’s strategy for the region while India is looking to become a key player in the Asian balance of power even as it improves its ties with major powers in the world. Already, India is expanding its defence cooperation with states in Southeast Asia, both through arms transfer and military training. It must be noted that Australia has already been engaged in training forces of some countries in the region. While at individual levels these measures are limited, there is scope for the three to come together and coordinate on a case-to-case basis to develop a flexible policy.

India has also focused on collaborating with other powers to ensure security of important waterways like Malacca Straits. The author also points out that India prefers a collective, ASEAN led system to ensure security and balance in the region. Australia is also realising the importance of enhancing its own bilateral ties instead of relying completely on the US as the latter too grapples with the geopolitical changes in Asia. ASEAN has already indicated its willingness to bring in India and Australia into the region as central players, as evidenced by its invitation to the two states to join East Asia Summit. It will keep the balance in the region and make the structure inclusive (Mohan 2009). Also, this mechanism means Australia would be more amenable to improving ties with India at a multilateral level as it helps it to avoid the charge of a direct containment of China by aligning with India.

While there is a lot of scope for cooperation between the two countries on several security issues, as Frederic Grare (2014) argues, the real potential will not be harnessed until both states increase their military capacities. At current levels, cooperation in various non traditional security issues can form the bed rock of a future relationship that becomes more broad-based in the coming years.

At present, despite the obvious benefits of an enhanced partnership, the level of cooperation between India and Australia remains limited. Even in forums like EAS, where scope exists for coordinating policies by both states on various issues, progress has been limited, with Australia complaining bitterly about India's "passivity," arguing that New Delhi's capacity remains rather limited when it comes to being a key player in the region (Grare 2014). India too has its perceptions about Australia being a rather distant partner in the region. The regular meetings of trade ministers and parliamentary exchanges are not conducted with India as of now, the institution of which will further improve political ties. Despite these limitations, a new cooperation has marked India-Australia bilateral relationship, with both states (like others in the region), realising the rationale of dealing with transnational challenges together while at the same time pursuing national interests in Southeast Asia in the backdrop of an uncertain balance of power in the region (Cronin et al 2013). This cooperation allows Australia to ensure its policy can be diversified from the two major powers in the region (Smith 2010).

This cooperation between India and Australia in Southeast Asia is only now beginning to truly take shape. While the security cooperation has seen some encouraging progress, movement forward in several other areas has been slow (Singh and Wesley 2009). Yet, even at the elementary stage, it is clear that there are benefits of cooperating with each other on the number of issues listed above.

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1. The paper may be composed in MS-Words format, Times New Roman font with heading in Font Size 14 and the remaining text in the font size 12 with 1.5 spacing.
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 - 2) Bhalla and Hazell (2003): "Rural Employment and Poverty: Strategies to Eliminate Rural Poverty within a Generation", *Economic and Political Weekly*, Vol.33, No.33, August 16, pp.3473-84.

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