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ENGAGING A NUCLEAR INDIA: PUNISHMENT, REWARD, AND THE POLITICS OF NON-PROLIFERATION

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This paper addresses India's claim that it is a "responsible nuclear power" and assesses recent changes in the international response to India's nuclear status. It finds that despite India's outsider status with respect to the Nuclear Non-Proliferation Treaty (NPT) and various export control regimes, it has maintained a very strong non-proliferation record. The decisions by the United States and Canada in 2005 to renew nuclear cooperation with India have recognized this, but, in so doing, have potentially undermined the legitimacy of the NPT. In reality, however, the primary mechanisms for influencing states' decisions to cross the nuclear threshold lie outside the NPT and can be strengthened through Indian participation. The path set by renewed cooperation with India is an uncertain one, but its pragmatic approach based on compliance behavior is likely a more credible and effective foundation than the illusions of the NPT.

INTRODUCTION

"...As a responsible State with advanced nuclear technology, India should acquire the same benefits and advantages as other such States which have advanced nuclear technology. As a result we expect that the resumption of India's nuclear trade and commerce with the U.S. and globally, is an achievable goal, involving the dismantling of the

*technology denial regimes which have hitherto targeted India....
India is a responsible nuclear power with an impeccable record on
nuclear non-proliferation."*

—Dr. Manmohan Singh, Indian Prime Minister, 2005

India is a nuclear power. One could be forgiven for not knowing this, however, when India's nuclear arsenal (with those of Israel and Pakistan) is the "elephant in the room" that few non-proliferation scholars seem willing to acknowledge. India's first nuclear explosion in 1974 was condemned by such members of the non-proliferation regime as the United States and Canada; they sought, then, to convince it to join the non-proliferation regime as a non-nuclear-weapon state (NNWS). The prospect of Indian disarmament has become increasingly improbable given India's second round of nuclear tests in 1998 and its continued refusal to become a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The international community has in response continued to deny official recognition of a "nuclear India" in an attempt to ensure the integrity of a non-proliferation regime founded in the NPT (NPT Review Conference 2000, Regehr 2006).

Three decades after its first nuclear explosion, an approach that officially rejects India's nuclear status while implicitly acknowledging its de facto capability is losing credibility. The non-proliferation regime is shifting focus to the threat of weapons of mass destruction (WMD) in the hands of non-state actors and small enemy states, and India's cooperation is needed to maintain the global effectiveness of non-proliferation controls. State behavior in terms of domestic regulation and export controls is gaining importance beyond the commitments of the NPT. India is striving to have its strong non-proliferation record overcome international opposition to its nuclear status, claiming that India is a "responsible nuclear power" willing to take on the responsibilities (and privileges) associated with such a role. This paper assesses this claim and determines the effects of a behavior-based definition of "responsibility" on the non-proliferation regime. It also explores the implications of international responses to India's behavior, including recent Canadian and U.S. agreements with India to resume civil nuclear energy cooperation.

Recognizing India as a nuclear weapon state (NWS) carries significant risks: in theory, it could undermine the NPT and the incentive structure of the non-proliferation regime, leading states such as Iran and North Korea to cross the nuclear threshold. This paper finds that it is a reliance on the NPT as the foundation of the non-proliferation regime that gives weight to these worries and prevents recognition of India as a responsible

nuclear power. Given the inadequacy of the NPT to prevent proliferation on its own merits and the eroding credibility of the fundamental bargains it strikes between nuclear and non-nuclear weapon states, the non-proliferation regime has for several years been implementing other mechanisms to tighten controls. These additional controls place a greater emphasis on compliance with norms rather than on symbolic treaty membership and so bring the regime closer to India, given its strong non-proliferation record. Within the NPT and outside of it, compliance is enforced based on the interests of the great powers exerting influence through mechanisms outside the regime. No matter what happens to India, this will arguably continue to be the case for Iran and North Korea. Of more fundamental importance is the regime's shift away from the commitment to global nuclear disarmament (embedded in the NPT) to a more explicit acceptance of the status quo. Over the long term, this shift will entail a weakening of the NPT but will also make the non-proliferation regime better able to address reality in a direct and proactive way.

INDIA'S COMPLIANCE WITH THE NON-PROLIFERATION REGIME

Evaluating India's claim of being a "responsible nuclear power" drives to the heart of current tensions in the nuclear non-proliferation regime. Any definitional criteria reflect a specific view on the goals of non-proliferation and the obligations faced by all NWS. Those who support a goal of complete nuclear disarmament would argue that there is no such thing as a responsible nuclear power given the potentially negative effects of nuclear weapon possession and use (Claude 1965, Schell 1998). A second perspective purely considering arms control would highlight the importance of stability and balance created by confidence-building, mutual deterrence, and arsenal limitations (Bull 1961, Levi and O'Hanlon 2005, Schelling 1961). From a third perspective, looking solely at non-proliferation, the responsibilities of an NWS lie in preventing the spread of nuclear weapons to states that do not have them (horizontal proliferation) and some would include the NWS refraining from developing new nuclear weapons capabilities (vertical proliferation¹) (Goldblat 1997, Roberts 1999, Smith et al. 2003). The balance between these three general perspectives has changed over time as the mechanisms that form the non-proliferation regime have evolved and increased in number. India has broken no laws or treaties in developing and testing its nuclear weapons, so an assessment must entail an abstract comparison with generally accepted commitments and the behavior of the recognized NWS.

THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT)

“Though [India is] not a party to the NPT, India’s policies have been consistent with the key provisions of the NPT that apply to nuclear weapon states. These provisions are contained in Articles I, III and VI.... India has been a responsible member of the international nuclear nonproliferation regime and will continue to take initiatives and work with like-minded countries to bring about stable, genuine and lasting nonproliferation, thus leading to a nuclear-weapon-free-world.”

—Jaswant Singh, Indian Minister of External Affairs, 2000

The nuclear non-proliferation regime has traditionally relied on the NPT as its foundational agreement. The NPT frames state responsibilities using criteria of both non-proliferation and disarmament: the ultimate goal of the NPT is not merely to have responsible NWS but to do away with nuclear weaponry altogether, and non-proliferation is a tool to reach this goal. The non-nuclear weapon states give up the pursuit of nuclear weapons while the nuclear weapon states commit to “pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control” (NPT Article VI).

India has never signed the NPT and is prevented from joining by the treaty’s definition of an NWS.² However, if one were to assume that the NPT NWS disarmament requirement can be applied to India, the legitimacy of such a requirement would be questionable given that it has not been applied in practice to the current five countries recognized as NWS. Though some may hold on to a glimmer of hope, the disarmament side of the NPT bargain has died a slow death over the three and a half decades since the treaty’s entry into force; the NWS have pushed the limits of any reasonable definitions of “negotiations in good faith” and an “early date.” In practice, the NWS have rejected nuclear disarmament as an obligation of the NPT, even though it exists on paper and is still seen as a requirement of NWS in the eyes of many other states. This is one reason for India’s rejection of the NPT. As Prime Minister Vajpayee stated in 1998, “It is a discriminatory treaty and has not served the purpose of non-proliferation but has given the right to five countries to proliferate vertically in disregard of universal opinion against the very existence of

nuclear weapons” (Vajpayee 1998).

India’s nuclear tests in 1974 undermined the NPT by demonstrating the non-universality of the treaty and rejecting its definitions of roles and responsibilities. India did not spread nuclear weapons to other states; it simply rejected the framework of global power distribution created by the NWS–NNWS distinction within the treaty. In essence, India asserted the same status as the recognized NWS, namely that it would pursue nuclear disarmament within an eventual process of global nuclear disarmament and not otherwise (Singh 1998b).³

Given India’s latent nuclear capability since 1974, the real impact of its 1998 tests lay not in its technical capacity but in its political decision to make its capacity overt. The world’s technical barriers to proliferation on the day after the tests were the same as on the day before, but the political barriers were not. The efforts of the non-proliferation community since 1974 to dissuade India from continuing its program were shown to be ineffective, again demonstrating the inability of a regime founded in the NPT to provide sufficient incentives for threshold states like India to participate.

INDIA AS A SOURCE OF PROLIFERATION: THE LATENT WORRY COMES TO THE FORE

While the overwhelming proliferation concern with India has been its emergence as a new NWS, the other side of the proliferation coin—the potential export of Indian nuclear weapons materials, technology, and expertise to other countries—has only recently gained attention. India has been the target of non-proliferation controls but little attention has been paid to India’s own adherence to such controls. Most of the damage from proliferation to India is done, but the threat posed by proliferation from India has been present for many years and will continue to be present in the future.

The focus on India’s nuclear status is a product of the NPT, and according to NPT criteria, India can never be considered a nuclear weapon state, let alone a responsible one, without amending the treaty.⁴ However, the nuclear non-proliferation regime is not limited to the NPT, a reality emphasized by recent events and new mechanisms developed to address them. Experiences with Iraq, Iran, and North Korea in the 1990s prompted a renewed focus on non-proliferation rather than the Cold War preoccupation with arms control between superpowers (Joeck 2006). The terrorist attacks on the United States in 2001 (and others such as the sarin attacks in Tokyo) pushed the non-proliferation community to address threats of proliferation

to non-state actors. The discovery of the black-market nuclear proliferation network of Pakistani scientist A.Q. Khan prompted a stronger focus on domestic implementation and the need for stricter international standards (Perkovich et al. 2005). The overall trend is that states are beginning to be held to account for their compliance with international commitments rather than just treaty membership, and their records of domestic regulation and behavior have now come to the fore (Simpson 2004).

Export Controls

The NPT includes a basic export control requirement: all nuclear material and processing equipment to NNWS must be under International Atomic Energy Agency (IAEA) safeguards (NPT Article III, paragraph 2). States parties to the NPT immediately faced a challenge of defining what should be considered nuclear material and equipment, leading to the creation of the Zangger Committee. The Zangger Committee developed what is called a “trigger list” of items that should be subject to IAEA safeguards under the NPT. The Committee and its trigger list still exist and the list has been frequently updated. The NPT review conferences in 1995 and 2000 refer to the Zangger list, which enjoys broad acceptance by NPT parties (Blackford 2005).

Following India’s 1974 test using plutonium extracted from a Canadian-built reactor, there was a clear recognition by suppliers of nuclear technology that more had to be done to inhibit the transfer and development of nuclear weapons capability. This led directly to the creation of the Nuclear Suppliers Group (NSG) in 1975, an informal grouping of states producing nuclear technology and materials, and to their agreement on the NSG’s first list of export control guidelines in 1978. While the controls of the NPT and Zangger list both require full-scope IAEA safeguards, the NSG guidelines apply further requirements of a more subjective nature, such as being “satisfied that the transfers would not contribute to the proliferation of nuclear weapons or other nuclear explosive devices or be diverted to acts of nuclear terrorism” (IAEA 2005a, 3). The NSG Guidelines were strengthened in 1992 by the addition of a list of dual-use technologies and more stringent requirements (IAEA 2005b).⁵

The IAEA also strengthened its safeguard system in 1997 with the introduction of an Additional Protocol for states’ safeguards agreements with the Agency. The Additional Protocol implements export controls and reporting requirements for trigger list and dual-use items, and defines the contents of such lists. The Protocol also makes states legally responsible for these controls, an important precedent in that it provides recourse and

a basis for enforcement in cases of non-compliance.

With Resolution 1540 the UN Security Council in 2004 became directly involved in nuclear controls. This resolution demanded that every UN member state implement domestic legislation to prevent the transfer of WMD to non-state actors. It included requirements for border, export, and transshipment controls, significantly extending the legal foundation of export controls within the international system (United Nations 2004).

India rejects the NPT's export controls based on the controls' distinction between the requirements for NWS and NNWS. It argues that such a distinction strengthens the discriminatory nature of the treaty. India has not adopted a comprehensive safeguards agreement with the IAEA or an Additional Protocol to the agreement because of its unrecognized nuclear status and these NWS–NNWS distinctions. At the same time, India is a member of the IAEA and recognizes the value of safeguards agreements, having concluded several such agreements related to imports from France and Russia (IAEA 1989a & 1990).

The NSG guidelines were, in no small measure, created specifically to prevent exports to India and have been resented by India since their inception (Stansfield 2006). Criteria for membership in the NSG include being a complying party to the NPT or equivalent regional treaty. To receive nuclear exports from the NSG, a state must either have an IAEA full-scope safeguards agreement (i.e., as a NNWS) or be a party to the NPT, effectively excluding India by definition (IAEA 2005c).

Despite its objections, India clearly recognizes the importance of export controls as a tool in preventing proliferation. It has independently developed a unilateral set of controls to regulate its exports that have evolved and strengthened over the past four decades. Its controls are founded on six laws passed since 1962, the most recent being the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act of June 2005. India's export controls now include: transit and transshipment controls, retransfer provisions, technology transfer controls, brokering controls, and end-use based controls. They address weapons materials and technology as well as sensitive and dual use technologies. They apply to Indian citizens and corporations operating in India and abroad, and also to foreigners operating within India. Its laws now seem to comply with UN Resolution 1540, and compare well in content to trigger lists of NSG guidelines (Gahluat and Srivastava 2005, IAEA 2005d). It is important to note, however, that some analysts, such as David Albright, have highlighted some weaknesses in the Indian export control system, though his assertions have not been verified (Albright and Basu 2006).

While export control systems implemented independently by individual states can have a significant impact on preventing proliferation, the importance of compliance by each exporting state highlights the need for a universal, consistent, verifiable, and enforceable system of export controls (Perkovich et al. 2005). India's participation is required to reach this goal. The main indicator of effectiveness, however, is its proliferation record, and its record speaks clearly: there have been no incidents of proliferation of nuclear materials or technology. India arguably has even a better record than several of the recognized NWS.⁶

INTERNATIONAL RESPONSE

The 1998 Tests

The nature of the security situation in South Asia and India's geo-political importance in 1998 prevented substantial or long-lasting punitive measures by the non-proliferation regime and its members. The perceived fragility of the situation (i.e., possible nuclear war between India and Pakistan) made a strategy of isolation and punishment very risky. The rising power of China and India's proximity to the Middle East and Central Asia also made the United States hesitant to severely damage its relationship with India. The UN Security Council condemned the tests but did not impose sanctions, though many states implemented their own measures for limited periods of time (Kampani 2001).

Recognizing that Indian nuclear disarmament was unrealistic given India's geo-political situation (i.e., China's nuclear arsenal), most countries opted for the lesser goal of containing India's capabilities (Mistry 1999). Diplomatic efforts attempted to promote strategic restraint (i.e., policies of no first-use and the maintenance of only a minimum deterrence), accession to the Comprehensive Test Ban Treaty (CTBT), and a moratorium on fissile material production within negotiations for a fissile material cutoff treaty (FMCT). India did announce a nuclear strategy of no first-use and minimum deterrent and declared a self-imposed moratorium on further nuclear testing. Most U.S. sanctions were removed later in the same year, and those remaining were removed shortly after the start of the U.S. war on terror in 2001. Russia even began to provide India with uranium. In general, the world's condemnation of India was not whole-hearted (Synnot 1999, 27-34, Kampani 2001).

At a minimum, the international response had to prevent any perception that India would be rewarded for its decision. This prompted the policy of many states to continue denying official recognition of India's nuclear status and to continue calling on India to renounce its nuclear ambitions

and join the NPT as a NNWS. There were clear motives of prestige and nationalism behind the tests, and many states hoped to deny India these benefits (Perkovich 1998).⁷ The impacts of the tests on India's bid for a permanent seat on the UN Security Council and on its long-term power and prestige are still not clear.⁸ Most recognized, however, that China's nuclear threat to India was still a concern. China, in turn, maintains its nuclear arsenal in part because of the arsenals of the other NWS (Perkovich et al. 2005, 44). Thus, even without official recognition, India's nuclear status was firmly embedded in the global nuclear deterrence framework with Indian nuclear disarmament contingent on progress in universal nuclear disarmament.

Implications for North Korea and Iran

In terms of implications for Iran and North Korea, it is important to make explicit the logic of any arguments. First, in 1998 the legal obligations of North Korea and Iran were different from those of India given their participation in the NPT. From a strict treaty perspective, there were no legal precedents set as India had never become a party to the NPT. At the same time, a legal perspective would highlight incentives for Iran and North Korea to withdraw from the NPT, something allowed under the text of the treaty and carried out by North Korea in 2003. This has led Perkovich, Matthews, and the other authors of *Universal Compliance* to recommend creating stronger barriers to withdrawal and stronger measures to deal with nuclear capabilities after withdrawal (Perkovich et al. 2005, 37-38).

Second, the world's inability to prevent Pakistan's tests after those of India was telling. Given the security crisis India's tests imposed on Pakistan, the only real ways to prevent Pakistan's tests were Indian disarmament or a Chinese security guarantee for Pakistan. Neither option was realistic given the deterrent relationship between the arsenals of India and China and China's unwillingness to get directly involved in an Indo-Pakistani war, leaving Pakistan to assert its own deterrent threat.

The most important precedent, however, is in terms of how much India gained by crossing the nuclear threshold. This equation is still being calculated as India's status continues to be addressed. India did gain a more explicit nuclear deterrent against China. Yet, beyond this deterrent, there were few tangible benefits. India arguably did not gain any security in its relationship with Pakistan, given Pakistan's tests the same month. In fact, India arguably became less secure by raising the stakes without gaining a significantly larger advantage than it had in conventional forces. It has not gained a permanent seat on the UN Security Council and, until the 2005

US-India agreement, had not achieved an end to restrictions on imports for its nuclear, missile, or chemical industries.

The tests of India and Pakistan also demonstrated that the world will likely not be able to prevent Iran and North Korea from developing nuclear weapons using the mechanisms of the NPT. Both countries have surpassed most barriers of technology, materials and expertise, with the remaining barriers being mostly strategic and political. The lack of a means to address these factors is the weakest part of the regime—there are no mechanisms to provide security assurances, and the strongest enforcement mechanism built into the regime is referral to the UN Security Council where action will require consent of the five permanent members. Without clear agreement by the permanent five members on measures to be taken, any pressure must be applied using sanctions, intervention, or economic carrots outside the regime. This pressure is dependent, as it was before India's tests, on the geopolitical and economic importance of the country and the state of relations between the great powers at any given time.

STRENGTHENING INDIA'S ROLE IN THE NON-PROLIFERATION REGIME

Given that the non-proliferation regime has already failed to prevent India from developing nuclear weapons and that at least tacit acceptance of India's nuclear status cannot be avoided, there are two remaining goals for the regime in relation to India: (1) to strengthen measures to prevent the spread of weapons and enabling-technologies from India, and (2) to avoid the generation of further incentives for states such as Iran and North Korea to cross the nuclear threshold. Unfortunately, these two goals may not be compatible. To assess any linkages between them, it is worthwhile to dissect the required content of each.

As identified previously, there are several nuclear non-proliferation responsibilities accepted by other NWS with which India does not comply. These include an IAEA safeguards agreement with Additional Protocol and the full implementation of NSG guidelines. Addressing these measures will not be a neutral process in terms of India's recognition. The first challenge is that disambiguating India's relationship with the IAEA will entail movement towards either NNWS status or NWS status. While it maintains a nuclear weapons program India cannot accept a full-scope IAEA safeguards agreement like that required of NNWS, as such agreements rule out all military use of any nuclear facilities and materials (IAEA 1972). The other option is to separate its military and civilian facilities and accept an agreement for safeguards on the latter, the practice of the

recognized NWS (IAEA 1978). Such an agreement could be portrayed as a preliminary measure dependent on future progress in disarmament, but it would still provide further recognition of India as an NWS.

Several options are theoretically possible for the implementation of NSG guidelines, including:

1. India could become a member of the NSG
2. India could apply the NSG guidelines on its own while still being subject to the guidelines
3. India could apply the NSG guidelines without being a member while the guidelines would be modified to remove export restrictions to India, as a special case or as part of a larger change in requirements.

Indian entry into the NSG would likely require a modification of the NSG charter to allow membership by a state not party to the NPT “or an equivalent international nuclear non-proliferation agreement” (IAEA 2005c para.23).⁹ Such a concession is unlikely, given how such a deal would further undermine the incentive structure of the NPT and considering that changes to the NSG guidelines can only be made through consensus (IAEA 2005a paragraph 16). At the same time, India would likely be unwilling to completely embrace and implement NSG guidelines while still being subject to their restrictions (though this is more symbolic than substantive given the similarities with India’s current export controls). To receive exports under current guidelines, India would also have to join the NPT (IAEA 2005b paragraph 4a)¹⁰ which it has explicitly refused to do (Singh 1998a). What India apparently wants is an exception from the NSG rules to suspend restrictions against it, something likely unpalatable to most of the Group (Squassoni 2005). Another danger is that such an exception would promote exceptions in other cases, such as Chinese nuclear cooperation with Pakistan (Squassoni 2005). This is a crucial impasse—the tension between strengthening non-proliferation controls and maintaining the incentive structure of the larger non-proliferation regime.

U.S. and Canadian Nuclear Cooperation Agreements with India

2005 saw two founding members of the NSG—the United States and Canada—agree to renewed nuclear cooperation with India. These agreements represent a major change in policy for both countries from one of isolation to one of engagement. The content of these agreements can be

compared to the non-proliferation goals identified so far to illuminate the tradeoffs at play and the future direction chosen for the non-proliferation regime.

President Bush on July 18, 2005 issued a joint statement with Prime Minister Singh including details of the creation of a partnership between the United States and India to promote stability, democracy, prosperity, and peace throughout the world (Governments of India and USA 2005). This had been in the works for some time, with a preliminary bilateral “Next Steps in Strategic Partnership” signed in 2004 (Governments of India and USA 2004). One area of partnership will be civil nuclear energy cooperation, the details of which were finalized on March 2, 2006 during President Bush’s visit to New Delhi (Singh 2006). The United States will “work to achieve full civil nuclear energy cooperation with India” and “seek agreement from Congress to adjust U.S. laws and policies [to permit such cooperation] (Governments of India and USA 2005).” It will also “work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India” (Governments of India and USA 2005).

In exchange, India “would take on the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States (Governments of India and USA 2005).” This includes a specific commitment to identifying and separating its civilian and military nuclear facilities and programs, declaring its civilian facilities to the IAEA, placing them under IAEA safeguards, and signing an Additional Protocol for those civilian facilities (Squassoni 2005). This is precisely the arrangement that the five recognized NWS have with the IAEA and therefore inches India further toward that same recognized status. The United States has chosen to resolve the first challenge of engaging a nuclear India—disambiguating India’s relationship with the IAEA—by recognizing India as an NWS.

India also agreed to implement Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines, especially notable given India’s historical opposition to these mechanisms (Squassoni 2005). The second challenge of engaging a nuclear India—integration with Nuclear Suppliers Group guidelines—has, however, not yet been clearly resolved. India has agreed to implement NSG guidelines in exchange for a removal of NSG restrictions against it, but it is not clear how the United States proposes to remove those NSG restrictions. Is it proposing a change in the NSG charter, a change to its guidelines, or a one-time exception? In all three scenarios, especially the first and second, the United States will

likely face significant opposition from many of the NSG countries and therefore have difficulty in implementing its side of the bargain.

Canada's agreement with India did not involve the same types of concessions on both sides. Building on a January 2005 Joint Declaration that discussed a broad strategic partnership, a new agreement in September 2005 included a commitment to increased civil nuclear energy cooperation (Prime Minister of Canada 2005; FAC 2005). Canada agreed "to allow the supply of nuclear-related dual-use items to Indian civilian nuclear facilities under IAEA safeguards, in accordance with the requirements of the NSG dual-use guidelines" (FAC 2005). It is unclear how Canada proposes to allow nuclear-related exports to India while still abiding by NSG guidelines, but the agreement attempts to avoid any reference to India's nuclear weapon capability or its potential status as an NWS. Clearly, Canada did not receive anything significant in terms of changes in India's non-proliferation behavior in return for its changes in policy. Within this context it is hard to see Canada's renewed cooperation as exemplifying anything other than support for the U.S. decision, a move to gain economic advantage for the Canadian nuclear industry, and/or a bargaining chip for gaining other political or economic benefits (Noble 2006). As Ross Neil has explained, however, the 2005 India agreement is not as drastic a change in Canadian policy as it may seem, given that Canada had already modified its 1974/1976 non-cooperation policies with India in 1990 and 2001 to allow collaboration related to nuclear safety (Neil 2006). The timing of Canada's 2005 announcement lends moral support to the direction the United States is setting for the non-proliferation regime, but it is not clear if this means Canada will support U.S. calls for change in the NSG (Stansfield 2006).

CONCLUSIONS & POLICY RECOMMENDATIONS

The 2005 U.S.-India nuclear cooperation agreement, if implemented, will secure India's participation in all the primary non-proliferation mechanisms except the NPT. Its participation, whether explicitly or otherwise, will be as a nuclear weapons state. Considering the similarities between India's current controls and the requirements of these mechanisms, there will not be any major changes in India's behavior related to non-proliferation. The principal change—the separation of its civilian and military nuclear facilities—is of largely symbolic importance and mainly facilitates civil nuclear energy cooperation rather than increasing protection or control. The agreement strengthens the non-proliferation regime through symbolic acceptance of the NSG, MTCR, and the IAEA safeguards, while it weakens

it through symbolic rejection of the NPT. It resolves some lingering tensions surrounding India's outsider status and strengthens the moral weight of the regime by bringing India, a leader in the Non-Aligned Movement, on board. At the same time, by removing ambiguities, the agreement reduces the ability of the regime to encompass multiple interpretations of its own purpose and narrows the range of options for the future. The final positive-negative balance will depend on the relative symbolic importance one gives to the NPT versus the other mechanisms.

The two most important tasks of the regime are (1) denying state and non-state actors the materials and technology to create nuclear weapons, and (2) lessening the desire of such actors to weaponize in the first place. The NPT has been foundational in carrying out both these tasks but its importance has faded. Would NNWS have any new incentives to weaponize if the NPT disappeared? The disarmament bargain would no longer exist, but has it ever really existed at all? If NNWS continued to receive cooperation for civilian nuclear energy programs and the NWS kept their nuclear weapons, what would change? Both tasks of the regime are now mostly carried out by mechanisms outside the NPT, multilaterally (e.g., through the IAEA and NSG) and through the great powers exerting their own influence. The Six-Party talks with North Korea, for example, are completely outside the structure of the NPT. The NPT serves as a valuable commitment to preventing the spread of nuclear weapons, for NNWS not to pursue them, and for NWS to eliminate them. However, the NPT should not be confused with a system that can actually prevent proliferation. This is highlighted by the ease with which countries can withdraw from the treaty, as exemplified by North Korea. What seems to be at issue is that non-proliferation without the NPT inherently promotes a status quo imbalance. The NPT softens that reality with a commitment, however illusory, to future equality.

The negative impacts on the NPT can be minimized by going slowly and not allowing economic interests to override non-proliferation goals. Precedents for threshold states are dependent on their perceptions of whether India has been rewarded for its nuclear arsenal, and therefore the United States and Canada should be as strict and hesitant as possible. For example, India's offer to apply IAEA safeguards to its civilian reactors should be implemented and safeguards actually put in place, unlike and in contrast to China's voluntary offer agreement as applied to Canadian-built reactors under which safeguards were not put in place (Government of Canada and Government of the PRC 1994; Hibbs 2002).¹¹ They should also avoid, for several years, an explicit endorsement of India's bid for a

permanent seat on the UN Security Council. Above all, India's status as a "nuclear weapon state" should still be kept as unofficial as possible. The United States and Canada should instead emphasize the importance of India's increased participation in the regime.

The movement of the non-proliferation regime towards a behavior-based definition of responsibility, whether or not explicitly recognized as such, is already under way. The goal of universal compliance must frame and guide all future directions, and the regime must be proactive in achieving this goal. As the symbolic importance of the NPT decreases, the United States and Canada must be prepared to help actively strengthen other incentives for states to continue renouncing nuclear weapons. This means supporting the IAEA in its facilitation of civilian nuclear programs in responsible states. It means strengthening the ability of the UN Security Council to address proliferation threats. It also requires addressing the security dilemmas of states like North Korea that feel pressured to develop their own nuclear deterrent and working over the long-term to reduce the number of states that are proliferation risks (Perkovich et al. 2005).

India rejected the NPT ostensibly because it saw the treaty as discriminatory (Singh 1998a). As India enters further into the non-proliferation regime as a nuclear weapon state, it is crossing the line from being a target of discrimination to being a discriminator. Its acceptance of this situation reveals what it values most: which side of the line it is on. India knows as well as any state that without universal nuclear disarmament, non-proliferation will never be about equality. Non-proliferation is about maintaining the status quo. As the United States and Canada have accepted, the success of the regime will be found not in softening this reality through illusions but through addressing the real behaviors that can prevent proliferation.

NOTES

- ¹ For example, the Comprehensive Test Ban Treaty is designed to address both horizontal and vertical proliferation by all banning nuclear explosive tests including basic as well as newly-developed advanced devices (see Corden 1997).
- ² A nuclear weapon state is defined by the NPT as "one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January, 1967" (Article IX, Paragraph 3).
- ³ As the Indian Minister of External Affairs explained in 1998, "Our national security lies either in global disarmament or in the exercise of the principle of equal and legitimate security for all" (Singh 1998b).
- ⁴ As discussed previously, the definition of an NWS is embedded in the treaty and excludes India.

- ⁵ One of the best histories of the NSG is their own piece submitted as an information circular to the IAEA, now in its third revision (IAEA 2005c). The NSG Guidelines are also an IAEA information circular, INFCIRC/254 parts I (nuclear-specific) and II (dual use), now in its 7th revision (IAEA 2005a & 2005b).
- ⁶ India did attempt to export a reactor to Iran, but broke the deal after significant international opposition. Exports of France and Russia have both been accused as contravening their commitments to the NSG guidelines (Nuclear Threat Initiative 2005).
- ⁷ A BJP spokesman in 1993 told the *New York Times*, “We don’t want to be blackmailed and treated as oriental blackies. Nuclear weapons will give us prestige, power, standing. An Indian will talk straight and walk straight when we have the bomb” (Perkovich 1998).
- ⁸ The United States still refuses to endorse India’s candidacy for a permanent seat on the UN Security Council, and discussion of the issue was notably absent from the July 18, 2005 Joint Statement (India-USA Joint Statement 2005).
- ⁹ The phrasing refers to NPT membership as a “factor to be considered” in participation in the NSG. The pressure put on Russia to stop uranium exports to India in 2001 was one indication that these “factors” lean more toward “requirements,” but exact limits to interpretation of this list are not clear. Thus this paper uses the phrasing “*likely* require modification,” given this potential ambiguity.
- ¹⁰ As with the previous note, NPT membership is a “factor to be considered” for exports, somewhat softer language than “requirement,” and leaving some possible room for interpretation and argument.
- ¹¹ The Canada-China nuclear cooperation agreement of 1994 requires that the CANDU reactors built in China be under China’s voluntary offer agreement for safeguards with the IAEA (Government of Canada and Government of the PRC 1994, IAEA 1989b). What this has meant in practice is that there are no safeguards in place as the IAEA has not taken up the offer, partly because of Canada’s (and China’s) refusal to foot the bill (Hibbs 2002). Canada does not seem to worry about diversion to weapons uses, presumably as China’s NWS status diminishes its importance. This leads one to wonder if something similar would be put into practice with future projects in India, and to what extent Canada’s past experiences with India are still relevant.

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