



The NPT Review Conference: A Policy for India

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The understatement of the year is that the Non-Proliferation Treaty (NPT) has weakened over the last several years, and is now in crisis. This issue becomes critical with the next NPT Review Conference scheduled to commence early next month (May 2005) in New York. How and why has this crisis occurred? Four major reasons obtain, which are discussed below.

- First, adherence to the NPT is not universal. It would be verisimilitude to emphasize that some 187 countries have entered the Treaty, but only 4 remain outside its fold. What is significant is that the 4 non-signatories--Israel, India, Pakistan and North Korea--are de facto nuclear weapon powers. However, they cannot be accorded de jure nuclear status under the NPT, since it includes a provision that "a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967." In effect, this has frozen the Nuclear Club at five. Keeping the four non-signatories out of the Treaty is anomalous; but accommodating them within the NPT would convey the ambiguous message to the non-nuclear weapon signatories that they could gain similar recognition by either covertly developing nuclear devices like Israel or covertly manufacturing and exploding nuclear devices like India and Pakistan or leaving the Treaty at an opportune moment like North Korea. This dilemma has accosted Treaty adherents in previous NPT Review Conferences and the annual inter-Conference PrepCom meetings held to discuss progress on decisions taken in earlier Conferences.
- Second, a corollary to the 4-nation dilemma arises from some non-nuclear weapon NPT signatories acquiring nuclear reactors for research or power generation, but proceeding stealthily thereafter to make nuclear weapons. North Korea enunciates this problem. Before withdrawing from the NPT in 2003 it had secretly established plutonium reprocessing and uranium enrichment capabilities by indigenous efforts and technology acquired clandestinely from China and Pakistan, to manufacture nuclear weapons. Iraq, another NPT signatory, had similarly acquired some rudimentary capabilities, but they were systematically demolished after Gulf War I, subsequent to the extensive UN-sanctioned inspections conducted in that country. Incidentally, several NPT adherents had assisted Iraq's nuclear quest, which included members of the Nuclear Suppliers Group (NSG). Its guidelines specifically prohibit transfer of sensitive nuclear technologies relating to reprocessing and enrichment, especially to countries of concern to the NPT regime. Libya retreated from pursuing this surreptitious path when its secret programme was discovered. Iran remains defiant, and seems determined to pursue uranium enrichment to fuel its future nuclear power plants, which is a legitimate peaceful pursuit. On the horizon are South Korea, its scientists had been experimenting with uranium enrichment technologies, and Taiwan that voluntarily gave up its plutonium reprocessing ambitions in the mid-seventies under American pressure.
- Third, the infinite harm to the international nuclear regime caused by A.Q. Khan's sub rosa activities, undertaken with the connivance, if

not support, of the Pakistan government, has yet to be accurately assessed. His transfer of nuclear technology to North Korea, Libya and Iran for personal gain, but also for institutional profit, has come to light. The United States has been unable to acquire direct access to him; so whatever information it currently possesses is based on what it has been informed by Pakistan, often times on the basis of leads provided by the CIA. What remains unknown, in these circumstances, could be far more serious than what has come to be known. Apropos, Pakistani atomic scientists are known to have contacted Osama bin Laden and the al Qaeda. Was A. Q. Khan involved? What was the nature of these contacts? The possibility of terrorists gaining access to nuclear weapons has acquired salience after 9/11, though some analysts believe this threat is greatly exaggerated. Presently, however, the NPT has no mechanism to deal with these threats. The IAEA is studying these difficult issues, but its informal assessment is that upwards of 35 entities, state and non-state, are enmeshed in the A.Q.Khan network. This is not surprising, considering the extensive tentacles

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supporting pillars upholding the NPT include the International Atomic Energy Agency (IAEA) and the NSG. The IAEA has virtually abandoned its promotional role to encourage the growth of atomic energy, a duty, incidentally, cast upon it under President Eisenhower's Atoms for Peace programme.

of clandestine nuclear trade. For instance, designs of the centrifuges to undertake uranium enrichment were transferred by A.Q. Khan to Malaysia for fabrication and supply to Libya, suggesting a three-way commerce to avoid detection.

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Instead, the IAEA has become a handmaiden of the nuclear weapon powers by emphasizing its regulatory functions of administering the safeguards imposed on national nuclear programmes. Even in this role it has failed. It could not, for instance, provide early warning of the clandestine activities in Iraq, North Korea and other nuclear aspirants before they became public knowledge. Similarly the NSG, established by a group of countries proficient in the nuclear industry, to control transfers of sensitive nuclear technology, has failed to prevent its own members from transferring sensitive technologies to nuclear aspirants. Germany, for example, supplied enrichment technology to South Africa and Brazil--both nursed unconcealed nuclear aspirations, in contravention of the NSG guidelines. Further, the Comprehensive Test Ban Treaty (CTBT), which seeks to prohibit nuclear testing in all environments, including underground nuclear tests, and the Fissile Material Cutoff Treaty (FMCT), designed to cap the production of fissile material to manufacture nuclear weapons have been emasculated by the United States. It has refused to ratify the CTBT after signing that Treaty, and wants the FMCT, which is yet to be negotiated, to abjure any provisions for its verification, which makes it meaningless. Both Treaties, obviously, are vital adjuncts of the international nuclear regime that supports the NPT. The resulting institutional paralysis bodes ill for the health of the NPT.

An article by article review of the NPT dramatizes the unresolved lacuna in the Treaty that will be voiced during the forthcoming NPT Review Conference. Thus Articles I and II enjoin the nuclear weapon and non-nuclear weapon State Parties to the NPT to refrain from providing or receiving assistance to manufacture "nuclear weapons or other nuclear explosive device." This is clearly not happening with clandestine transfers proceeding apace. Article III prohibits the transfer of nuclear technology, except under IAEA safeguards, which is also not happening. Article IV enjoins State Parties to cooperate with each other to use nuclear energy for development programmes. The NSG has devised its own list of countries and technologies that will not be supplied, creating artificial distinctions between

State Parties to the NPT; this differentiation will increase with counter-proliferation measures like the Proliferation Security Initiative gaining salience. Article V envisages the "potential benefits from any peaceful applications of nuclear explosions" being provided to State Parties, which remains a dead letter for all practical purposes.

Article VI is the real bone of contention, and its non-implementation will engender much heat in the upcoming NPT Review Conference. It enunciates that, "Each of the Parties to the Treaty undertakes 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." Article VI embodies the essential bargain underlying the NPT viz. that Non-Nuclear Weapon States would abjure the acquisition of nuclear weapons (Article II) in return for the Nuclear Weapon States proceeding to "cessation of the nuclear arms race... and to nuclear disarmament." It is evident that this is not occurring. Indeed, President Bush has taken the US in the opposite direction; it is developing 'mini-nukes' and 'bunker busters' for battlefield use, and refurbishing its nuclear arsenal with a new generation of nuclear warheads that can be stored for longer periods without testing. These actions are hardly calculated to stop nuclear arms racing and move towards nuclear disarmament.

Proceeding further, it might be noticed that the last NPT Review Conference held in 2000 had suggested 13 "practical steps for the systematic and progressive efforts to implement Article VI," which laid out an agenda reached by consensus for incrementally advancing the objectives of Article VI. [Cf Appendix] These issues had repeatedly surfaced in the PrepCom meetings held in 2002, 2003, and 2004. Disconcertingly, these 13 "practical steps" have been dismissed by President Bush as being a "historical document." Therefore, the American strategy during the PrepCom meetings was to focus attention on the transgressions of Article II by Iran, North Korea and Libya to divert attention from its own failure to implement Article VI. This was apparent from John Bolton, Head of the U.S. delegation's statement before the 2004 PrepCom, where he stated, "We cannot divert attention from the violations we

face by focusing on Article VI issues that do not exist." It is arguable that American weapons acquisitions have no realistic bearing on the aspirations of nuclear candidates seeking nuclear weapons for security and prestige considerations. Nevertheless, it can be felicitously urged that American actions to sophisticate its nuclear arsenal are hardly calculated to discourage aspirant States from reversing their efforts to acquire nuclear weapons. Other delegations were more even-handed on this issue highlighting the infractions of all States -- nuclear and non-nuclear--ignoring the NPT's prohibitions. The battle-lines are thus drawn. It is very likely that this seminal issue relating to the rights and obligations of the nuclear and non-nuclear State Parties to the NPT will dominate the proceedings.

Of what relevance are these controversies to India? It has not joined the NPT; therefore it cannot represent itself at the NPT Review Conference. It should be noted that, despite conducting nuclear tests and declaring itself to be a nuclear weapon state, India can only enter the NPT as a non-nuclear weapon State. Before the NPT Review and Extension Conference was held in 1995, it was discussed whether India could join these proceedings as an Observer. This would not have allowed India to take part in the proceedings but provided the opportunity to urge its views informally to delegates during inter-Session periods. This modality did not find favour with the Government.

The question now arises whether India should ignore the NPT or seek entry into it on more equitable terms? Clearly, a country with world power ambitions cannot remain on the margins of the non-proliferation regime, despite its commendable record. India has not transferred nuclear weapons or assisted nuclear aspirants to

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acquire them (Article I). Further, it has only transferred nuclear technology under safeguards (Article III). India is the only nuclear weapon state to commit itself to starting negotiations on a Nuclear Weapons Convention and strive for their ultimate elimination (Article VI). Therefore, despite not entering the NPT, India has scrupulously adhered to its provisions, supported the IAEA's mandate, adhered by the NSG's guidelines, and declared an indefinite moratorium on further nuclear testing, which is the operative principle underlying the CTBT. No FMCT is yet in sight, but India is willing to join its deliberations whenever they begin. What further steps could it take to establish its credentials as a responsible member of the non-proliferation regime?

Two further steps seem possible and their implications are discussed below.

- First, India could place its atomic power reactors under international safeguards. The plutonium in their spent fuel can, in theory, be used to manufacture nuclear weapons, but this is not the preferred source. India's dedicated nuclear reactors Cirus (40 MWs) and Dhruva (100 MWs), and its three plutonium separation plants are adequate for its military programme. India also has an embryonic uranium enrichment programme, which could be scaled up to produce fissionable uranium. Placing its civilian atomic reactors under safeguards, therefore, will not affect its military programme.
- Second, India could explore the "as if" modality to gain entry into the NPT without amending the Treaty, which requires any amendment "to be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear weapon States Party to the Treaty and all other Parties, which on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency." India could make a unilateral declaration to adhere by the provisions of the NPT and its associated arrangements in return for its inclusion in the NPT as a nuclear weapon State. In the alternative, it could sign a Protocol to accommodate India, along with

Pakistan and Israel, as additional nuclear weapon parties to the Treaty.

- These innovative measures would, of course, have to be negotiated with the present NPT signatories. They could object on the grounds that accommodating India, Pakistan and Israel as nuclear weapon States in the NPT would "reward" them for their intransigence, which would encourage further proliferation. On the other hand, NPT signatories would realize that the inclusion of these de facto nuclear weapon states into the NPT would draw them into further arms control measures, and strengthen their commitment to abide by the NSG guidelines prohibiting the transfer of nuclear technology to State and non-State actors. For the three new entrants, the incentive would be recognition as nuclear weapon States under the NPT and coming out of their nuclear limbo. This would also open the doors for acquiring nuclear, space and conventional weapons technology in a less circumscribed manner.

Appendix

2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons



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