CENESS, Moscow 28 August 2014

Challenges and Opportunities for Integration of Non-NPT States into the Non-Proliferation Regime: The Case of India

John Carlson
Counselor, NTI
Member, Advisory Council, International Luxembourg Forum
The views presented are the author’s, not necessarily those of NTI, the International Luxembourg Forum, or other affiliations.
INTRODUCTION

Original topic suggested was -

Australia, uranium supply to India, and the Raratonga Treaty

but there is a wider context, which this presentation will discuss:

- how to integrate the non-NPT states into the non-proliferation and disarmament regime?
OVERVIEW

1. NPT and non-Parties
   - full-scope safeguards
   - other NPT principles
   - NSG and the *India exception*.

2. Bilateral agreements
   - US India agreement - *a lost opportunity*
   - other agreements.

3. Other multilateral agreements/mechanisms – current and prospective
   - engaging the non-NPT states *(are they willing)*?

4. Issues relating to India

5. Conclusions


1. NPT and non-Parties

- NPT recognises 5 NWS – US, Russia, UK, France, China
  - states that exploded a nuclear device before 1 January 1967.

- All other states considered to be NNWS
  ( though NPT does not specifically define NNWS ).

- Four other states have conducted nuclear tests, or are believed to have nuclear weapons:
  - India (1974), Pakistan (1998), DPRK (2006), and Israel
    - India, Pakistan and Israel never joined NPT
Full-scope safeguards

- NNWS parties commit to accept IAEA safeguards on all nuclear material
  - was called full-scope, now comprehensive, safeguards.

- Many parties interpreted NPT as requiring full-scope safeguards for nuclear supply to any NNWS
  - i.e. any state other than the 5 recognised NWS
  - effectively, limiting supply to NPT parties
    - a major incentive to join
  - but this was never the universally accepted legal interpretation.

Full-scope safeguards (2)

- Full-scope interpretation made sense when aim was to universalise NPT membership
  - but now only 4 non-parties
    - these states unlikely to disarm and join NPT as NNWS in near term
  - now a different approach is needed.

- Today the general interpretation, for supply to a non-party, is that the NPT only requires safeguards on transferred material/items
  - NSG’s 2008 decision to exempt India from its full-scope safeguards policy (the India exception) is consistent with this interpretation.
Applicability of other NPT principles to non-parties

- Clearly nuclear-armed states cannot join NPT as NNWS
  - not practical to amend definition of NWS, obvious dangers in re-opening NPT text.

- But other NPT provisions *could be* adopted by these states:
  - not to assist others to acquire nuclear weapons (Art. I)
  - to require safeguards on nuclear transfers (Art. III.2)
  - to commit to pursue negotiations on cessation of the nuclear arms race, nuclear disarmament and general disarmament. (Art. VI)

- In addition NPT has *implicit* principles, e.g.:
  - separation of military and civil programs
  - effective control of sensitive nuclear technology
  - effective security for nuclear materials (physical protection).

CENESS Moscow  28 August 2014
Non-proliferation and disarmament principles

• Also there are important NPT RevCon statements
  - esp. moratorium on nuclear tests and support for FMCT.

• How to get non-parties to accept legally-binding commitment to these principles?
  - one possibility is a protocol to the NPT
    o but there is no such proposal, and no indication this would have support
    o India maintains NPT is discriminatory, unlikely to support any protocol.

• More viable approach - to pursue these various commitments through other treaties and mechanisms - bilateral and multilateral - as opportunities arise.
2. Bilateral agreements

- Bilateral agreements provide an opportunity to influence the NPT non-parties

  - e.g. in 2005 Bush/Singh statement India undertook to:
    - separate civil and military programs and place civil facilities under IAEA safeguards, and to conclude an AP for civil facilities
    - continue unilateral test moratorium
    - work towards FMCT
    - strengthen export controls

  - consequently India has concluded an expanded IAEA safeguards agreement covering 14 out of 20 existing reactors, related facilities, and future facilities designated civil

  - and has now concluded an AP - though this does not meet the commitment to cover civil facilities (only to report exports).
Bilateral agreements (2)

• Opportunity missed
  - the 2007 US-India agreement does not include major commitments from the 2005 statement (e.g. the test moratorium), nor most of the NPT principles mentioned earlier
    o this agreement has set the bar low for other agreements.

• Subsequent agreements - e.g. Russia, France, UK, ROK, Mongolia, Namibia, Argentina, Canada, Kazakhstan - do not cover these broader issues.

• Now, little leverage to cover these issues with India
  - but they could be pursued with other non-NPT states (Pakistan, Israel), if nuclear supply to these states were considered.

• Bilateral cooperation could bring indirect influence
  - discussed later.
3. Other multilateral agreements

Relevant agreements and mechanisms include:

- CPPNM and 2005 Amendment
- IAEA safeguards agreements
- CTBT
- NSG
- Proposed FMCT
- Arms control agreements
Nuclear security - CPPNM and 2005 Amendment

• 1980 CPPNM applies primarily to international transport - 149 parties.

• 2005 Amendment extends commitments to domestic programs, sets out fundamental principles
  - not yet in force, requires 100 ratifications, currently 77.

• India and Israel are parties to both
  - Pakistan is party to CPPNM but not 2005 Amendment
  - DPRK party to neither.

• International governance weak, compared with safeguards or safety
  - no binding international standards, accountability mechanisms
  - difficult to assess standards in the non-NPT states
    - out of 25 states with weapons-usable materials, on available indicators
      NTI Index ranks Israel 21, Pakistan 22, India 23, and DPRK 25
  - can they be encouraged to do more?
Separating military and civil programs: IAEA safeguards agreements

- Safeguards not mandatory for nuclear-armed states, but can clearly indicate separation
  - US and UK - all civil facilities and material under VOA
  - France – VOA covers facilities and materials under bilateral agreements
  - Russia and China – VOA covers facilities considered useful to safeguards
    - plus facilities/material subject to bilateral agreements
  - IAEA inspections in NWS are limited (around 5% total safeguards effort)
  - UK and France - Euratom inspections apply to all civil facilities.
Safeguards (2)

- India has undertaken to separate military and civil
  - IAEA safeguards apply to most civil facilities
  - unlike in NWS, IAEA inspects all facilities designated for safeguards
  - but important “civil” materials and facilities remain outside safeguards
    - at best, causing ambiguity
    - and some facilities are officially described as dual purpose.

- Pakistan and Israel – safeguards apply to supplied facilities and materials.

- DPRK – currently no safeguards.
Nuclear testing - CTBT

- CTBT not yet in force
  - ratification outstanding by 8 specified states:
    - China, Egypt, Iran, Israel and US - have signed, not yet ratified
    - India, Pakistan and DPRK - have not signed.
Nuclear supply/export controls - NSG

- **NSG coordinates export controls** – though not legally-binding
  - India has undertaken to harmonise with NSG Guidelines (this does not require membership)
  - US undertook to promote Indian membership
    - not yet agreed, NSG divided.

- **Indian membership contentious** – NSG was established in response to India’s misuse of supplied technology (1974 “PNE”)
  - key question - how India would use membership?
    - NSG operates by consensus – would India block changes to supply guidelines, block new members (e.g. if Pakistan proposed)?

- **Possibility of Pakistan and Israel joining not under consideration**
  - given AQ Khan’s proliferation activities, could Pakistan demonstrate credible export controls?
Proposed FMCT

- Verifiable stop to fissile material production for nuclear weapons an essential step towards deep nuclear cuts and eventual disarmament
  - Pakistan frustrating efforts to start FMCT negotiations in CD
  - if Pakistan cannot be persuaded to stop blocking, essential to find another way to start negotiations.

- Pakistan clearly concerned about India’s withholding of “civil” stocks and facilities from safeguards, and its expanding fissile production capabilities (reprocessing, fast breeder program, enrichment)
  - addressing South Asian arms race is central to FMCT prospects, this should be a key priority for P5.
Arms control agreements

- To date formal arms reduction agreements have been bilateral between US and Russia
  - as US and Russia reduce (New START limits deployed strategic warheads to 1,550 each), smaller arsenals become more significant
    - especially where these are increasing (China, India, Pakistan)

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>290</td>
<td>Israel</td>
<td>80-200</td>
</tr>
<tr>
<td>China</td>
<td>250</td>
<td>Pakistan</td>
<td>90-110</td>
</tr>
<tr>
<td>UK</td>
<td>160</td>
<td>India</td>
<td>80-100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DPRK</td>
<td>&lt; 10</td>
</tr>
</tbody>
</table>

- essential to engage all nuclear-armed states in future negotiations (whether collectively or in appropriate groupings).
4. Issues relating to India

• Important to bring India into the nuclear “mainstream” –

• On the civil side:
  - India has huge and growing electricity demand – if met largely by coal, major impact on environment and climate
  - India has questionable nuclear safety record – mutual benefit in allowing access to modern technology
  - need to provide alternative to India’s Three-Stage fuel cycle strategy (using FBRs to produce weapons grade plutonium to fuel thorium reactors)
    o serious proliferation risks (provocative to Pakistan) and terrorism risks
  - developing modern commercial nuclear power sector will establish moderating influence on India’s nuclear behaviour.

• On military side: essential to take steps to prevent escalating arms race.
Problem areas

- **Inadequate separation of civil and military**
  - dual purpose facilities, withholding civil stocks.

- **Plans to produce weapons-grade materials for “civil” use.**

- **Expanding military production.**

- **Safeguards** - India’s IAEA agreement has positive aspects – active inspections, irreversibility – but some shortcomings:
  - India designates whether facility comes under safeguards, important facilities and stocks remain outside
  - AP does not apply to Indian facilities, contrary to commitment given
  - imported material not automatically under safeguards, requires specific agreement or arrangement.

- **Indian exceptionalism** – is India prepared to follow global norms?
  - e.g. bilateral safeguards, nuclear liability, limiting sensitive nuclear technology, proliferation resistance.
Issues for specific suppliers

• **Australia and Raratonga Treaty**
  - Australia currently negotiating nuclear agreement with India
  - Raratonga Treaty excludes supply of nuclear material or equipment to any NNWS unless *subject to the safeguards required by Article III.1 of the NPT* (i.e. full-scope safeguards)
    - Article III.1 applies only to NNWS party to the NPT – Raratonga appears to limit supply to these states (or to NWS)
    - question (1) – is India a NNWS under the Raratonga Treaty?
    - question (2) – is a legal challenge (*domestic or international*) possible?

• **Kazakhstan and Semipalatinsk Treaty**
  - this treaty much more explicit – no supply to any NNWS without a comprehensive safeguards agreement and AP
  - Kazakhstan is supplying India – how can this be consistent with Semipalatinsk Treaty?
5. Conclusions

• The non-proliferation regime – *including nuclear disarmament* – is based on legally binding commitments accepted by all NPT parties
  - the four non-NPT parties – all nuclear-armed – benefit from the regime without contributing to it.

• Essential to draw these states into the regime -
  - deep cuts and eventual disarmament require *universalit*. 
Conclusions (2)

• Drawing in the non-NPT states requires nuclear cooperation, rather than isolation
  - but reciprocity needed – cooperation should be based on constructive participation in regime commitments
  - some commitments – support for non-proliferation, effective export controls, separation of military and civil programs, moratorium on testing – should be readily acceptable
    o only question is form – how to give commitment legal effect
  - other commitments – capping fissile production and warhead numbers – will require regional tensions to be addressed
    o needs active engagement by other states, especially P5
    o all states will benefit through these issues being resolved.