

Remembering Nonproliferation Principles

William C. Potter

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For questions, contact information on the authors, or to receive a copy of the book (subject to availability), please contact Carl Robichaud at The Century Foundation (robichaud@tcf.org)

Contents

1. Introduction: Clearing the Nuclear Clouds <i>Jeffrey Laurenti</i>	1
2. Into the Breach: The Drive for a New Global Nuclear Strategy <i>Joseph Cirincione and Carl Robichaud</i>	9
3. Rebuilding an Unraveled Consensus for Sustainable Nonproliferation <i>Jayantha Dhanapala</i>	21
4. Nuclear Pessimism Is Not the Answer <i>Michael Krepon</i>	33
5. Time for Comprehensive Policies on Nuclear and Biological Weapons <i>Christopher F. Chyba</i>	51
6. Remembering Nonproliferation Principles <i>William C. Potter</i>	61
7. Restoring Faith in the Double Bargain <i>Hans Blix</i>	69
8. Market-Fortified Nonproliferation <i>Henry D. Sokolski</i>	81
9. Reversing the Spread of Nuclear Weapons <i>Carl Robichaud</i>	93
Appendix 1. European Perspective: A View from Rome	107
Appendix 2. Point/Counterpoint: A Nuclear Weapons-Free World	111

REMEMBERING NONPROLIFERATION PRINCIPLES

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Once upon a time, in the not too distant past, it was relatively easy to identify the nonproliferation purists. They were the true believers in the Nuclear Non-Proliferation Treaty (NPT) and its associated institutions such as the International Atomic Energy Agency (IAEA). These states, which could be counted on to lead the charge in support of the treaty's core principles and to insist upon strict adherence to all of its provisions, included Australia, Canada, Germany, Ireland, Japan, New Zealand, Norway, South Africa, and Sweden. The United States and Russia also typically were leaders of the nonproliferation chorus, although they tended to sing more softly and off-key whenever the lyrics touched upon the treaty's disarmament provisions.

All of these states played crucial roles when the NPT was extended indefinitely in 1995, and also in 2000, when the NPT Review Conference endorsed important new disarmament and nonproliferation measures. In addition, a number of the countries joined together in like-minded political groupings such as the New Agenda Coalition to provide a bridge between nuclear weapon states (NWS) and non-nuclear weapon states (NNWS) on contentious disarmament and nonproliferation issues.

Today, although a few of these nonproliferation stalwarts continue to champion the cause consistently, most former members of the core group have retreated to a more selective embrace of NPT principles and practices. This posture, which was evident in the United States' stance at the 2005 NPT Review Conference, has become manifest among many other countries in the past eighteen months.

This shift toward "cherry-picking" of nonproliferation commitments is most evident with respect to the debate over extending

nuclear trade to India, but it may reflect a more fundamental reevaluation on the part of many countries about the relative importance to attach to economic, political, and nonproliferation objectives.

TO TRADE, OR NOT TO TRADE?

At the heart of the current debate over nonproliferation priorities in many capitals is the issue of whether, and under what conditions, countries should jettison export controls and other policies that preclude civil nuclear energy cooperation and trade with countries not party to the NPT or otherwise lacking safeguards on all of their nuclear facilities (so-called comprehensive or full-scope safeguards). The precipitant for this debate was the announcement on July 18, 2005, by President George W. Bush and Prime Minister Manmohan Singh that the United States and India had reached a historic agreement to cooperate in the civilian nuclear energy sector. The announcement, which had the effect of overturning more than a quarter-century of U.S. nonproliferation declaratory policy, was made with little interagency debate and without consultations between the White House and Congress or between the United States and its allies. It also was criticized by most nonproliferation experts, a notable exception being IAEA director-general Mohamed ElBaradei. Despite strong opposition from the arms control community, the White House-driven initiative gained remarkable bipartisan support in the U.S. Congress, culminating in passage of the U.S.-India Peaceful Atomic Energy Cooperation Act by an overwhelming vote (359–68 in the House and 85–12 in the Senate).

The bill was signed into law by President Bush on December 18, 2006. Before the United States can commence nuclear trade with India, however, (a) the two parties must negotiate a bilateral nuclear cooperation accord, (b) India must conclude a safeguards agreement with the IAEA, (c) the forty-five members of the Nuclear Suppliers Group (NSG) must reach consensus on an exception for India to standard guidelines governing nuclear exports, and (d) Congress must approve the bilateral nuclear agreement.

It is not the purpose of this essay to assess the overall merits of the U.S.-India nuclear deal. The extended and convoluted process by which the U.S. Congress has moved to revise domestic law to accommodate nuclear commerce with India has been the subject of

much scholarly analysis and media commentary.¹ Considerable media attention—at least in nuclear trade publications—also has been given to plotting the twists and turns of the ongoing deliberations by the NSG over a U.S.-initiated proposal to create a special exception for India to the NSG's standard export control guidelines. This proposal, which requires consensus in order to be adopted, has been hotly debated at meetings of the NSG, most recently at a Consultative Group session in April 2007 in Cape Town, South Africa. At the time of this writing, it appears as though no consensus has yet been reached, although most NSG members are inclined to subordinate nonproliferation considerations to those of economic and political interests and at least tacitly support the proposed exception to the guidelines.

Surprisingly, the debate over nuclear trade with India to date has largely ignored a core nonproliferation issue—whether nuclear trade with a non-NPT party and without full-scope safeguards is compatible with existing NPT political commitments. Even more noteworthy by its absence in the debate is the issue of how states plan to reconcile their legal obligations under nuclear-weapon-free zones (NWFZs) with expression of intent to engage in commerce prohibited by zonal treaties. It is almost as if states with these obligations are unaware of them.

THE STRENGTH OF POLITICAL COMMITMENTS TO NPT PRINCIPLES AND OBJECTIVES

The process by which the NPT was extended indefinitely in 1995 was a complex one, and the result was not assured until the last moment. Central to the outcome was an arrangement orchestrated by conference president Jayantha Dhanapala to link the decision about indefinite extension of the NPT to two other decisions and one resolution—a package whose general contours were suggested by South Africa, with the strong support of Canada.² In addition to the decision to extend the NPT indefinitely, the package included a decision on “Strengthening the Review Process for the Treaty” and on “Principles and Objectives for Nuclear Non-Proliferation and Disarmament,” as well as a “Resolution on the Middle East.” These very diverse elements, which were attractive to different political

groupings, were essential in gaining the conference's support for the extension decision, and all of the elements together were adopted without a vote.³

One of the least contentious items included in the list of twenty "Principles and Objectives" was the principle (Paragraph 12) that new nuclear supply arrangements should require full-scope safeguards as a precondition of export. This approach was a logical extension of a similar guideline adopted in 1992 by the NSG. However, it is a requirement most NPT states parties today prefer to ignore when it applies to India.

It is perhaps unsurprising that the United States should engage in such selective inattention, as it has employed since at least 2004 the dubious practice of picking and choosing which elements from prior NPT review conference decisions and documents it continues to support and which it disavows because political circumstances have changed. What is more striking is that so many critics of U.S. "cherry-picking" should adopt precisely the same practice when it comes to the inconvenient Paragraph 12 that constrains nuclear commerce with India. This indictment applies with special force to South Africa and Canada, which are widely viewed as the key architects and watchdogs of the 1995 NPT package.

THE FORCE OF LEGAL OBLIGATIONS UNDER NWFZs

If there is some ambiguity about whether the 1995 NPT Review and Extension Conference decisions are legally binding, there is no uncertainty regarding the South Pacific and African NWFZs. The case is particularly clear-cut with respect to the Treaty of Rarotonga, which entered into force on December 11, 1986. Australia and New Zealand are among the thirteen full members of the treaty from the region, and also belong to the Nuclear Suppliers Group.⁴ Article 4 (a)(i) of the Treaty of Rarotonga mandates parties not to provide nuclear material or equipment unless it is subject to IAEA safeguards, the comprehensive nature of which is further elaborated on in Annex 2 of the treaty dealing with "IAEA safeguards."

A similar full-scope safeguards provision is found in Article 9 of the Treaty of Pelindaba, the African NWFZ named after the site where South Africa manufactured nuclear material for its weapons

program. This treaty, which was opened for signature in April 1996, has not yet entered into force. However, a large number of African states, including South Africa, already have ratified the treaty and are legally obligated to abide by its terms as specified both by national law and by the 1969 Vienna Convention on Treaties.

Notwithstanding their zonal obligations, South Africa and Australia are expected to endorse creation of a special exception for India under the NSG guidelines. This exception would allow nuclear trade even though India does not meet the regular NSG requirements regarding full-scope safeguards.

THE EU AS A NONPROLIFERATION BELLWETHER

A number of analysts have pointed to the emergence of the European Union as a significant positive force for nonproliferation in recent years.⁵ In support of this thesis, they note the common and comprehensive platform pursued by the large block of EU states at the 2005 NPT Review Conference and a similar common position to promote the entry into force of the Comprehensive Test Ban Treaty (CTBT). They also cite the innovative application of “soft power” in requiring a nonproliferation clause in new EU trade and investment agreements with other states. This standard clause includes language requiring the trading partner to take steps to sign, ratify, or accede to and fully implement international nonproliferation and disarmament treaties and agreements such as the NPT and the CTBT. More generally, the EU has emphasized the goals of “strengthening the international system of nonproliferation, pursuing universalization of multilateral agreements, and reinforcing strict implementation and compliance with these agreements.”⁶

Although the nature of the European Union has precluded the use of traditional security-oriented nonproliferation tools, it has begun to apply with some success a variety of measures involving finance and trade to encourage prudent nonproliferation behavior.⁷ This approach involves the strict and consistent application of the principle of conditionality—that is, linking good nonproliferation practices to access to European markets and investments. As one prominent European analyst has observed, “‘hard’ conditionality should ideally become a *sine qua non* of access to European aid and markets.”⁸

What is needed to make soft nonproliferation power effective, according to this perspective, is the inclusion in future EU nonproliferation clauses of “specific commitments such as CTBT ratification . . . and, most importantly, ratification of the IAEA’s Additional Protocol.”⁹ Unfortunately, precisely the opposite is now being seriously contemplated within the EU with respect to India.

According to Annalisa Giannella, the personal representative of EU high representative for nonproliferation, Javier Solana, a number of EU states are pressing for the deletion of the standard WMD nonproliferation clause in a pending trade and investment agreement with India. Giannella is reported to have argued convincingly that were the EU to adopt such a double standard it would be necessary to abandon the conditionality clause altogether in future agreements with third countries.¹⁰

It is uncertain, however, if a principled nonproliferation stance will prevail in view of India’s strong opposition to the clause and India’s lure as a huge, lucrative market for European trade and investment. A precedent for a less stringent EU stance already can be found in the December 2005 EU decision to include India in a 10 billion euro project to build an experimental nuclear fusion reactor, although EU officials have sought to downplay the nonproliferation impact of that deal.¹¹

UNUSUAL DEVIATION OR NEW NORM?

It remains to be seen if subordination of nonproliferation objectives to other considerations will be a fleeting phenomenon or an enduring fact. A disturbing sign is that, in a number of capitals, the decision about nuclear trade with India appears to have been made by officials without responsibility for nonproliferation matters and with little regard for its proliferation implications. This is clearly the case in the United States and Canada, and also appears to be the case in Australia, Brazil, Germany, and Sweden, as well as in other members of the NSG.

Indeed, among the long-time nonproliferation stalwarts that are also members of the NSG, only Ireland and New Zealand have consistently objected to the special exception for India.¹² Interestingly, among the very large and diverse group of Non-Aligned Movement

(NAM) members, which traditionally emphasize disarmament over nonproliferation considerations, only Indonesia has been vocal in objecting to the double standard conveyed by nuclear trade with a non-NPT party. This position probably is not unrelated to the fact that Indonesia, unlike South Africa, is not a major nuclear exporter.¹³

At the end of April 2007, members of the NPT will convene in Vienna for a two-week negotiation to initiate the next cycle of the treaty review process. This forum, known formally as the first session of the 2010 Preparatory Committee for the 2010 NPT Review Conference, provides an excellent opportunity to test the commitment of treaty members to their political and legal obligations, and the relative priority they attach to different foreign policy objectives.

Given the barren results of the 2005 NPT Review Conference, there is a strong temptation by members to avoid contentious issues and to seek a “smooth” PrepCom outcome. Although this attitude is understandable, it also is unfortunate, since it is likely to discourage debate on the most difficult and pressing proliferation issues, including that of nuclear trade with non-NPT parties.

In particular, those states that continue to think of themselves as leaders of the nonproliferation community would do well to remember the principles that used to guide their nonproliferation policies and for which they took justifiable pride. Otherwise they may rightly be accused of adopting the expedient philosophy expressed by the American humorist Groucho Marx: “Those are my principles, and if you don’t like them . . . well, I have others.”

emption” has been reserved for those cases where one party believes that war is imminent, so strikes first to lessen the damage done by the would-be aggressor.

8. Much greater detail may be found in *U.S. Nuclear Weapons Policy: Confronting Today's Threats*, pp. 297–323.

9. For a discussion of the puzzle of the mismatch between the number of nuclear-capable states and the number of states that have nuclear weapons, see Jacques E. C. Hymans, *The Psychology of Nuclear Proliferation* (Cambridge: Cambridge University Press, 2006), pp. 2 ff.

10. This discussion draws on Christopher F. Chyba, “Toward Biological Security,” *Foreign Affairs* 81, no. 3 (2002): 122–36.

11. Robert Carlson, “The Pace and Proliferation of Biological Technologies,” *Biosecurity and Bioterrorism* 1, no. 3 (2003): 1–12. For a thorough review of the increase and global spread of these technologies, see *Globalization, Biosecurity, and the Future of the Life Sciences*.

12. Christopher F. Chyba and Alex L. Greninger, “Biotechnology and Bioterrorism: An Unprecedented World,” *Survival* 46, no. 2 (2004): 143–62.

13. See Christopher F. Chyba, “Biotechnology and the Challenge to Arms Control,” *Arms Control Today*, October 2006, available online at http://www.armscontrol.org/act/2006_10/BioTechFeature.asp.

14. “Report of the UN Secretary-General: Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy,” April 27, 2006, paras. 52–57.

15. International Council for Science-Africa, “Kampala Compact: The Global Bargain for Biosecurity and Bioscience,” October 1, 2005.

16. For a review of the current international nuclear weapons landscape, see Christopher F. Chyba and Karthika Sasikumar, “A World of Risk: The Current Environment for U.S. Nuclear Weapons Policy,” in *U.S. Nuclear Weapons Policy: Confronting Today's Threats*, pp. 1–33.

CHAPTER 6

1. For useful analyses see Robert J. Einhorn, “The U.S.-India Civil Nuclear Deal,” Statement Before the Senate Foreign Relations Committee (April 26, 2006); George Perkovich, “Faulty Promises: The U.S.-India Nuclear Deal,” *Policy Outlook* no. 21, Carnegie Endowment for International Peace, September 2005; William C. Potter, “India and the New look of U.S.

Nonproliferation Policy,” *Nonproliferation Review* (July 2005): 343–54; Sharon Squassoni, “U.S. Nuclear Cooperation with India: Issues for Congress,” Congressional Research Service Report RL 33016, June 27, 2006; and Ashley Tellis, “Should the U.S. Sell Nuclear Technology to India?” Part II, *YaleGlobal* Online, November 10, 2005, available at <http://yaleglobal.yale.edu/display.article?id=6487>.

2. See the statement by South African Foreign Minister Alfred Nzo in the General Debate at the 1995 Review and Extension Conference on the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons reproduced in Thomas Markram, *A Decade of Disarmament, Transformation and Progress* (Pretoria, South Africa: SaferAfrica, 2004), pp. 137–42. The only component of the package not highlighted in this speech relates to the Middle East, an issue that was promoted forcefully by several states, including Egypt.

3. For an insightful analysis of the 1995 NPT Review and Extension Conference see Jayantha Dhanapala (with Randy Rydell), *Multilateral Diplomacy and the NPT: An Insider’s Account* (Geneva: United Nations Institute for Disarmament Research, 2005).

4. The entire list of members is: Australia, Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

5. See, for example, Harald Müller, “A Treaty in Troubled Waters: Reflections on the Failed NPT Review Conference,” *The International Spectator* 40, no. 3 (July–September 2005): 33–44 (especially pp. 43–44); Bruno Tertrais, “The European Union and Nuclear Nonproliferation: Does Soft Power Work?,” *The International Spectator* 40, no. 3 (July–September 2005): 45–57; and Oliver Meier, “The European Union’s Nonproliferation Strategy: An Interview with Annalisa Giannella, the Personal Representative on Nonproliferation of Weapons of Mass Destruction to EU High Representative Javier Solana,” Arms Control Association, July 26, 2005, available online at http://www.armscontrol.org/interviews/20050726_Giannella.asp.

6. See the Council of the European Union Website: http://ue.eu.int/cms3_fo/showPage.asp?id=392 cited in Tertrais, “The European Union and Nuclear Nonproliferation,” p. 48. This common position was adopted in 2004.

7. See Meier, “The European Union’s Nonproliferation Strategy.”

8. Tertrais, “The European Union and Nuclear Nonproliferation,” p. 57.

9. *Ibid.*, p. 56.

10. “EU Aide Worried by Calls to Drop India WMD Clause,” Reuters, March 2, 2007, available online at http://www.bilaterals.org/article.php3?id_article=7311.

11. See “EU OKs India Joining ITER Nuclear Reactor Project,” Reuters, December 2, 2005.

12. Norway and Sweden are conflicted on the issue but appear unwilling to block consensus.

13. Recently, several other NAM members, including Egypt, have expressed frustration that the U.S.-India nuclear deal has complicated efforts to mount pressure against Israeli nuclear activities.

CHAPTER 7

1. George P. Shultz, William J. Perry, Henry A. Kissinger and Sam Nunn, “A World Free of Nuclear Weapons,” *Wall Street Journal*, January 4, 2007, p. A15.

CHAPTER 8

1. Statement by UN secretary-general Kofi Annan, 2005 NPT Review Conference, New York, May 2, 2005, available online at <http://www.un.org/apps/sg/sgstats.asp?nid=1427>.

2. The United States and IAEA are pushing such a scheme under two separate initiatives. See “Nuclear Threat Initiative Commits \$50 Million to Create IAEA Nuclear Fuel Bank,” Joint NTI/IAEA Press Release 2006/16, September 19, 2006, available online at <http://www.iaea.org/NewsCenter/PressReleases/2006/prn200616.html>, and “The Global Nuclear Energy Partnership: Greater Energy Security in a Cleaner, Safer World,” U.S. Department of Energy, March 2007, available online at <http://www.gnep.energy.gov/gnepProgram.html>.

3. See e.g., Debra K. Decker and Erwann O. Michel-Kerjan, “A New Energy Paradigm: Ensuring Nuclear Fuel Supply and Nonproliferation through International Collaboration with Insurance and Financial Markets,” Belfer Center for Science and International Security, March 2007, pp. 21–22. On the self-defeating character of the U.S. GNEP program’s plea to divide the world into fuel supplying nations and fuel recipients, see Edwin Lyman, “The Global Nuclear Energy Partnership: Will It Advance Nonpro-